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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8301]

RIN 1545-AI91

Definition of Compensation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to temporary regulations.

SUMMARY: This document contains corrections to temporary regulations relating to the scope and meaning of the term "compensation" in section 414(s) of the Internal Revenue Code of 1986.

FOR FURTHER INFORMATION CONTACT: Marjorie Hoffman at 202-343-6954 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations which are the subject of this correction amend the Income Tax Regulations (26 CFR part 1) under section 414(s) and under section 415(c)(3) of the Internal Revenue Code of 1986. These amendments conform the regulations to section 1115 of the Tax Reform Act of 1986 (TRA '86) and section 1011(j)(1) of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA).

Need for Correction

As published, temporary regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the temporary regulations published May 14, 1990 (55 FR 19875) FR Doc. 90-10967, is corrected as follows:

Paragraph 1. On page 19875, column 1, the fifth line of the headings should be corrected to read "RIN 1545-AO70".

Par. 2. On page 19876, column 1, the first line of the last paragraph in the "*Definitions of Total Compensation Under Section 415(c)(3)*" portion of the preamble, should be corrected to read "Finally, § 1.415-2(d) has been".

Par. 3. On page 19877, column 3, the fourth line under the "*Effective Date of These Temporary Regulations*" portion of the preamble, should be corrected to read "beginning before May 14, 1990,".

§ 1.414(s)-1T [Corrected]

Par. 4. On page 19878, column 2, the heading for § 1.414(s)-1T(c)(2) is corrected to read "(2) *Compensation within the meaning of section 415(c)(3).*"

Par. 5. On page 19878, column 3, the second line of § 1.414(s)-1T(c)(3) is corrected to read "Under the safe-harbor alternative".

Par. 6. On page 19878, column 3, the last sentence of § 1.414(s)-1T(c)(3) is corrected to read "The compensation for any relevant self-employed individuals must be determined pursuant to the rules in paragrpah (e)(1) of this section."

Par. 7. On page 19879, column 3, the thirteenth line from the end of § 1.414(s)-1T(e)(1)(i) is corrected to read "(as defined in paragraph (d)(2)(ii) of this".

Par. 8. On page 19879, column 3, lines 3 and 4 of § 1.414(s)-1T(g)(1) is corrected to read "to years beginning on or after January 1, 1987."

Par. 9. On page 19879, column 3, a comma should be added to the end of line 2 of § 1.414(s)-1T(g)(2) to read "For years beginning before May 14, 1990,".

§ 1.415-2 [Corrected]

Par. 10. On page 19880, column 3, § 1.415-2(d)(11)(i) should be corrected to read "(i) *Section 3121(a) wages.* Wages as defined in section 3121(a), for purposes of calculating social security taxes, but determined without regard to the wage base limitation in section 3121(a)(1), the limitations on the exclusions from wages in section 3121(a)(5) (C) and (D) for elective contributions and payments by reason of salary reduction agreements, the special rules in section 3121(v) (applicable to certain elective contributions and nonqualified deferred compensation), any rules that limit covered employment based on the type or location of an employee's employer, and any rules that limit the remuneration included in wages based on familial relationship or based on the nature or location of the employment or the services performed (such as the exceptions to the definition of employment in section 3121(b) (1) through (20))."

Par. 11. On page 19881, column 1, the signature block should also have reflected that "Kenneth W. Gideon, Assistant Secretary of the Treasury" also signed the document.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 90-14425 Filed 6-21-90; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Grand Haven Regulation 90-03]

Safety Zone Regulations; Muskegon Lake, Muskegon, MI

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone on Muskegon Lake, Muskegon, MI, to protect the safety of life and property on the water during the Muskegon Lake Offshore Run on 24 June 1990.

EFFECTIVE DATE: This regulation becomes effective at 10:30 a.m. (e.d.s.t.) on 24 June 1990 and will terminate at 4 p.m. (e.d.s.t.) on 24 June 1990.

FOR FURTHER INFORMATION CONTACT: John R. Allyn, Radarman First Class, U.S. Coast Guard Group, 650 Harbor Ave., Grand Haven, MI 49417, (616) 847-4500.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to preclude damage to vessels and equipment or injury to perople in the vicinity.

Drafting Information

The drafters of this regulaiton are John R. Allyn, Radarman First Class, U.S. Coast Guard Group Grand Haven and M. Eric Reeves, Lieutenant Commander, U.S. Coast Guard, Project Attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from a high-speed power boat race which will be conducted on Muskegon Lake, Muskegon, MI. during this time. The safety zone is needed to ensure the protection of life and property during the high-speed power boat race.

This regulation is issued pursuant to 33 U.S.C. 1225 and all 1231 as set out in the authority citation for all of part 165.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certificaiton

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulations and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because of the short duration of these regulations, their economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new § 165.T0912 is added to read as follows:

§ 165.T0912 Safety Zone: Muskegon Lake, Muskegon, MI.

(a) *Location.* The following area is a safety zone: Muskegon Lake in its entirety.

(b) *Effective date.* This regulation will become effective at 10:30 a.m. (e.d.s.t.) 24 June 1990, and terminate at 4 p.m. (e.d.s.t.) 24 June 1990.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited, except when expressly authorized by the Coast Guard Patrol Commander (Commanding Officer, U.S. Coast Guard Station Grand Haven, MI.)

(2) The Coast Guard will Patrol the Safety zone under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Operators of vessels, not participating in the event, desiring to transit the regulated area, may do so only with prior approval of the Patrol Commander and when so directed by that officer. Transiting vessels will be operated at bare steerageway, and will exercise a high degree of caution in the area.

(3) The Patrol Commander may direct the anchoring, mooring or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area, under the direction of the Coast Guard Patrol Commander, shall serve as a signal to stop. Vessels so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(5) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

Dated: June 7, 1990.

L. L. Mizell,

Commander, U.S. Coast Guard, Captain of the Port, Grand Haven, MI.

[FR Doc. 90–14452 Filed 6–21–90; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–3727–3]

40 CFR Part 60

Standards of Performance for New Stationary Sources; Test Methods

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Method 21 applies to the determination of volatile organic compounds (VOC) leaks from process equipment such as valves, flanges and connections, pumps and compressors, and pressure relief devices. Since Method 21 was promulgated in 1983, several deficiencies in the method that could lead to inconsistencies in the determination of VOC leaks from such devices have come to the attention of EPA in the form of questions as to the proper application of the method. On May 30, 1989, EPA proposed appropriate additions and revisions to Method 21 to alleviate any deficiencies (54 FR 22920). This action promulgates those additions and revisions.

DATES: *Effective Date.* June 22, 1990.

Judicial Review. Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this notice. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Docket.* A docket, number A–88–29, containing information considered by EPA in development of the promulgated rulemaking is available for public inspection between 8 a.m. and 4 p.m., Monday through Friday, at EPA's Air Docket Section (LE–131), room M–1500, First Floor, Waterside Mall, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: William Grimley or Roger T. Shigehara, Emission Measurement Branch (MD–19), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–2237.

SUPPLEMENTARY INFORMATION:

I. The Rulemaking

Section 2.4 is being revised to remove a description of the leak determination procedure, which is already given, and more properly belongs in section 4.3.2. The example of an acceptable increase in surface concentration versus local concentration is incorrect, and is being removed, as all existing regulatory subparts state that any reading less than 500 ppm constitutes "no detectable emissions." The definition is now expressed in terms of the instrument readability specification.

Section 3.1.1(b) is being revised because it is important to call attention to the possibility that the leak definition concentration may be beyond the linear response range of some instruments for some VOC. This potential problem is not identified by the existing calibration procedure, which specifies a single upscale VOC calibration gas. An argument could be made that a multipoint calibration should, therefore, be required. However, adding that requirement would increase the method's performance burden and cost.

Section 3.1.1(c) is being revised in consideration of existing regulatory subparts, where the intention is for the readability to be to the nearest 500 ppm. Since the leak definition in existing subparts is 10,000 ppm, the nearest 500 ppm represents ±2.5 percent, not ±5 percent.

Section 3.1.1(d) is being revised to prevent any flow interruption from occurring, such as could occur if a manually operated device was used for a pump. The minimum flow rate specification of 0.50 liter per minute is reduced to 0.10 liter per minute to prevent the exclusion of some instruments that do meet the response time specification and could be acceptable if this change was made. The flow rate specification has been qualified as to where, and under what conditions, it applies in order to prevent misunderstandings that it might apply at the instrument detector, or with no flow restriction in the probe. The upper flow limit specification of 3.0 liters per minute is retained because some upper limit on flow rate is required to prevent dilution of any leaking VOC to a concentration below the definition of a leak.

Section 3.1.1(e) is being revised in consideration of comments that have been made to EPA that the existing wording in not clear and should be more specific. In addition, it has been reported that inexperienced sampling personnel have been observed to use a portable flame ionization analyzer with the exhaust flame arrestor not replaced after removal for cleaning.

Section 3.1.1(f) is being added to emphasize that the instrument is meant to sample a discrete area. Some probes have been observed to have a relatively large inlet area. The addition is necessary so as to provide as much consistency in the identification of leaks as in reasonably possible. All measurements made by EPA in support of its VOC-leaks regulatory development activities have been made with probes not over ¼ in. in outside diameter.

Section 3.1.2(a) is being revised to include a procedure that is needed for those instances where an instrument is not available that meets the response factor criteria when calibrated with the specified (in regulation) VOC calibration gas. The new procedure should meet the spirit of existing VOC-leak regulations.

Finally, section 3.1.2(b) is being revised by replacing the word "configuration" with all of the items of sampling equipment that might be between the probe tip and the detector during testing.

This rulemaking does not impose emission measurement requirements beyond those specified in the current regulations, nor does it change any emission standard. Rather, the rulemaking would simply add methods for the achievement of emission testing requirements that would apply irrespective of this rulemaking.

II. Public Participation

The proposed amendment to 40 CFR part 60 that contained proposed revisions and additions to Method 21 was published in the **Federal Register** on May 30, 1989 (54 FR 22920). Public comments were solicited at the time of proposal. To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed action, a public hearing was scheduled for July 14, 1989 beginning at 10 a.m., but was not held because no one requested to speak. The public comment period was from May 30, 1989 to August 14, 1989. Two comment letters were received that contained comments concerning the proposed methods. The comments were supportive of the proposed additions and revisions, with one exception. That comment has been carefully considered, but no changes were made to the proposed rulemaking.

III. Comments and Changes to the Proposed Standards

Two comment letters were received from synthetic organic chemical manufacturers on the proposed methods. All but one of the comments therein were statements to the effect that the commenter agreed with the proposed additions and revisions. The one exception stated that the commenter did not agree that an electrically driven pump should be required in section 3.1.1(d).

The EPA believes it is necessary to specify that an electrically driven pump be used in order to eliminate any potential for imprecise results due to variations or interruptions in sample flow arising from the use of a hand operated squeeze pump. It may be possible for a given person to use a hand operated pump satisfactorily, but EPA believes that technique is too prone to operator fatigue over the course of an extensive leak survey to permit its use in a reference method, and is, therefore, not making any change in the requirement for an electrically driven pump.

IV. Administrative

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify readily and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards, and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review [Clean Air Act, section 307(d)(7)(A)].

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and, therefore, subject to the requirements of a regulatory impact analysis. The Agency has determined that this regulation would result in none of the adverse economic effects set forth in section 1 of the Order as grounds for finding a regulation to be a "major rule." The rulemaking does not impose emission measurement requirements beyond those specified in the current regulations, but instead, provides methods for performing emission measurement requirements that would apply irrespective of this rulemaking. The Agency has, therefore, concluded that this regulation is not a "major rule" under Executive Order 12291.

The Regulatory Flexibility Act (RFA) of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of an RFA in those instances

where small business impacts are possible. Because these standards impose no adverse economic impacts, an RFA has not been conducted.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the promulgated rule will not have any economic impact on small entities, because the rule does not add either to the existing requirement for flow rate measurements, or increase their associated performance cost.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and any written EPA responses are in the docket.

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Synthetic Organic Chemicals Manufacturing Industry, Reporting and recordkeeping requirements.

Dated: June 7, 1990.

William K. Reilly,

Administrator.

Method 21, appendix A of 40 CFR part 60 is amended as follows:

1. The Authority for 40 CFR part 60 continues to read as follows:

Authority: Sections 101, 111, 114, 116, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

Appendix A—[Amended]

2. By revising section 2.4 to read as follows:

2.4 No Detectable Emission. Any VOC concentration at a potential leak source (adjusted for local VOC ambient concentration) that is less than a value corresponding to the instrument readability specification of section 3.1.1(c) indicates that a leak is not present.

3. By revising section 3.1.1 (b), (c), (d), and (e) and adding (f) to read as follows:

3.1.1 Specifications.

* * * * *

(b) Both the linear response range and the measurable range of the instrument for each of the VOC to be measured, and for the VOC calibration gas that is used for calibration, shall encompass the leak definition concentration specified in the regulation. A dilution probe assembly may be used to bring the VOC concentration within both ranges; however, the specifications for instrument response time and sample probe diameter shall still be met.

(c) The scale of the instrument meter shall be readable to ±2.5 percent of the specified leak definition concentration when performing a no detectable emission survey.

(d) The instrument shall be equipped with an electrically driven pump to insure that a sample is provided to the detector at a constant flow rate. The nominal sample flow rate, as measured at the sample probe tip, shall be 0.10 to 3.0 liters per minute when the probe is fitted with a glass wool plug or filter that may be used to prevent plugging of the instrument.

(e) The instrument shall be intrinsically safe as defined by the applicable U.S.A. standards (e.g., National Electric Code by the National Fire Prevention Association) for operation in any explosive atmospheres that may be encountered in its use. The instrument shall, at a minimum, be intrinsically safe for Class 1, Division 1 conditions, and Class 2, Division 1 conditions, as defined by the example Code. The instrument shall not be operated with any safety device, such as an exhaust flame arrestor, removed.

(f) The instrument shall be equipped with a probe or probe extension for sampling not to exceed ¼ in. in outside diameter, with a single end opening for admission of sample.

4. By revising section 3.1.2 (a) and (b) to read as follows:

3.1.2 Performance Criteria.

(a) The instrument response factors for each of the VOC to be measured shall be less than 10. When no instrument is available that meets this specification when calibrated with the reference VOC specified in the applicable regulation, the available instrument may be calibrated with one of the VOC to be measured, or any other VOC, so long as the instrument then has a response factor of less than 10 for each of the VOC to be measured.

(b) The instrument response time shall be equal to or less than 30 seconds. The instrument pump, dilution probe (if any), sample probe, and probe filter, that will be used during testing, shall all be in place during the response time determination.

* * * * *

[FR Doc. 90-13845 Filed 6-21-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 90-215]

Administrative Practice and Procedure

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order amends § 1.80 of the Commission's rules to codify recent amendments to section 503(b)(2) of the Communications Act of 1934, as amended, 47 U.S.C. 503(b)(2). The amendments reflect increased forfeiture amounts for violations of the Communications Act or Commission rules.

EFFECTIVE DATE: December 19, 1989.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Linda Blair, Office of General Counsel, (202) 254-6530.

SUPPLEMENTARY INFORMATION: The Commission adopted on June 1, 1990, and released on June 18, 1990, the following *Order* amending § 1.80 of the Commission's rules, 47 CFR 1.80. These amendments reflect increases in the forfeiture amounts for violations of the Communications Act or Commission rules.

Order

Adopted: June 1, 1990; Released: June 18, 1990.

In the Matter of amendment of § 1.80 of the Commission's Rules to Modify Forfeiture Provisions.

1. Congress recently amended section 503(b)(2) of the Communications Act of 1934, as amended, 47 U.S.C. 503(b)(2), which governs forfeitures that can be imposed by the Commission.[1] By this *Order* we amend § 1.80 of our rules, 47 CFR 1.80, to reflect the amended statute.

2. Under the amended statute, if the entity subject to forfeiture penalty is a broadcast station licensee or permittee, a cable television operator, or an applicant for any broadcast or cable television operator license, permit, certificate, or other instrument of authorization issued by the Commission, the Commission may assess up to $25,000 per violation or each day of a continuing violation, provided that the total amount assessed for a continuing violation may not exceed $250,000 for any single act or failure to act. If the entity subject to forfeiture penalty is a common carrier subject to the provisions of the Communications Act or an applicant for any common carrier license, permit, certificate, or other instrument of authorization issued by the Commission, the Commission may assess up to $100,000 for each violation or each day of a continuing violation, provided that the total amount assessed for a continuing violation may not exceed $1,000,000 for any single act or failure to act. In the case of any other entity subject to forfeiture penalty, the Commission may assess up to $10,000 for each violation or each day of a continuing violation, provided that the total amount assessed for a continuing violation may not exceed $75,000 for any single act or failure to act.

3. The changes to §1.80 adopted herein merely codify in our rules recent amendments to 47 U.S.C. 503(b)(2). Therefore, the Commission for good

[1] Pub. L. No. 101-239, 135 Cong. Rec. H9343 (daily ed. Nov. 21, 1989), signed into law December 19, 1989 (to be codified at 47 U.S.C. 503(b)(2)).

cause finds that compliance with the notice and comment and effective date provisions of the Administrative Procedure Act is unnecessary. *See* 5 U.S.C. 553(b)(B), 553(d)(3).

4. Accordingly, pursuant to sections 4(i), 303(r) and 503(b)(2) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 503(b)(2) *It is ordered,* That 47 CFR 1.80 is amended, effective December 19, 1989, as set forth below.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Penalties.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rule Changes

Title 47 of the Code of Federal Regulations, part 1, is amended to read as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303: Implement, 5 U.S.C. 552, unless otherwise noted.

2. Section 1.80 is amended by removing in the sentence immediately following paragraph (a)(4) the phrase "(b)(1) and (b)(2)" and adding in lieu thereof the phrase "(b)(1), (b)(2), and (b)(3)."

3. Section 1.80 is amended by revising paragraphs (b)(1) and (b)(2), redesignating paragraph (b)(3) as (b)(4) and adding a new paragraph (b)(3) to be followed by the note currently following paragraph (b)(2) to read as follows:

§ 1.80 Forfeiture proceedings.

* * * * *

(b) *Limits on the amount of forfeiture assessed.* (1) If the violator is a broadcast station licensee or permittee, a cable television operator, or an applicant for any broadcast or cable television operator license, permit, certificate, or other instrument of authorization issued by the Commission, except as otherwise noted in this paragraph, the forfeiture penalty determined under this section shall not exceed $25,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $250,000 for any single act or failure to act described in paragraph (a) of this section. There is no limit on forfeiture assessments for EEO violations by cable operators that occur after notification by the Commission of a potential violation. *See* section 634(f)(2) of the Communications Act.

(2) If the violator is a common carrier subject to the provisions of the Communications Act or an applicant for any common carrier license, permit, certificate, or other instrument of authorization issued by the Commission, the amount of any forfeiture penalty determined under this section shall not exceed $100,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $1,000,000 for any single act or failure to act described in paragraph (a) of this section.

(3) In any case not covered in paragraph (b)(1) or (b)(2) above, the amount of any forfeiture penalty determined under this section shall not exceed $10,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $75,000 for any single act or failure to act described in paragraph (a) of this section.

* * * * *

4. Section 1.80 is amended by revising paragraph (j) to read as follows:

§ 1.80 Forfeiture proceedings.

* * * * *

(j) *Effective date.* Amendments to paragraph (b) of this section implementing Pub. L. No. 101–239 are effective December 19, 1989.

[FR Doc. 90–14487 Filed 6–21–90; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 383

RIN 2125–AC58

Commercial Driver Testing and Licensing Standards; Driving Record Prerequisites for Waiver of Skills Test

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This technical amendment corrects two of the driving record requirements which a State must impose on a commercial driver's license (CDL) applicant before waiving the driving skills test. First, an applicant must certify that, during the two-year period immediately prior to applying for a CDL, he/she has not had more than one conviction for a serious traffic violation committed in any type of motor vehicle. Second, for the same period, the applicant must certify that he/she has not had any conviction for an accident-related violation of State or local traffic laws, and has no record of an accident in which he/she was at fault. All other driving record prerequisites to the substitute for driving skills tests in 49 CFR 383.77 remain without correction.

EFFECTIVE DATE: June 22, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Neil E. Moyer, Office of Motor Carrier Standards, (202) 366–5844, or Mr. Paul L. Brennan, Office of Chief Counsel, (202) 366–1350, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: 49 CFR 383.77 allows States to waive the CDL driving skills test for applicants who meet certain driving record prerequisites and possess either a minimum level of driving experience, or evidence of prior classified testing, in a representative commercial motor vehicle (CMV). To fulfill the driving record prerequisites of § 383.77(a) as presently codified, an applicant must certify that, during the two-year period immediately prior to applying for a CDL, he/she has not had—

(1) More than one license;

(2) Any license suspended, revoked, or cancelled;

(3) Any convictions for any type of motor vehicle for the disqualification offenses contained in § 383.51; and

(4) Any traffic-accident related violation of motor vehicle traffic control laws, nor any record of an accident in which he/she was at fault.

Under paragraph (3) above, "the disqualification offenses contained in § 383.51" include two distinct categories of infractions. The first category, defined in § 383.51(b), consists of driving under the influence of alcohol or drugs, leaving the scene of an accident, and committing a felony involving a CMV. A single conviction for an offense in this first category results in disqualification of the driver for a period of one year or more, and clearly obviates any possibility of exempting the driver from skills testing if he or she applies for a CDL within two years from the date of conviction. Since there is no ambiguity regarding the effect of a single offense in this first category on the State's ability to waive skills testing, this technical amendment retains the provision of paragraph (3) above, but with specific reference to driving under the influence, leaving the scene of an accident, and commission of a felony.

The second category of offenses includes the "serious traffic violations" for which § 383.5 provides the definition and § 383.51(c) prescribes the penalties. Disqualification of 60 or 120 days results from two or three convictions, respectively, for serious traffic violations within a three-year period. Thus, for this second category, the "disqualification offense" is two or more convictions, not the single conviction implied by paragraph (3) above. This technical amendment resolves this internal contradiction for offenses in the second category by creating a new paragraph (4) in § 383.77(a), stating that the driver applicant must not have had more than one conviction for serious traffic violations in the two years prior to applying for the CDL.

With the insertion of a new paragraph (4) in § 383.77(a), paragraph (4) above becomes new paragraph (5). As presently codified, the paragraph contains an error in that it requires the applicant to certify he/she has not had a violation of traffic control laws. In addition to the renumbering, this technical amendment changes the wording of the paragraph to read conviction.

The following is a summary of the structure of § 383.77(a) as revised by this technical amendment. To be eligible for possible waiver of the CDL skills test, an applicant must certify that, during the two-year period immediately prior to applying for a CDL, he/she has not had:

(1) More than one license [paragraph unchanged];

(2) Any license suspended, revoked, or cancelled [paragraph unchanged];

(3) Any convictions for any type of motor vehicle for the disqualifying offenses contained in § 383.51(b)(2) [paragraph revised to apply only to driving under the influence, leaving the scene of an accident, or commission of a felony];

(4) More than one conviction for any type of motor vehicle for serious traffic violations [new paragraph dealing solely with serious traffic violations as defined in § 383.5]; and

(5) Any conviction for a traffic control violation (other than a parking violation) arising in connection with any traffic accident, nor any record of an accident in which he/she was at fault. [New paragraph renumbering and correcting § 383.77(a)(4) as presently codified.]

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. The amendment in this document is technical in nature and needed solely to correct existing regulations. For these reasons and since this rule imposes no additional burdens on the States or other Federal agencies, the FHWA finds good cause to make this regulation final without prior notice and opportunity for comments and without a 30-day delay in effective date under the Administrative Procedure Act. For the same reasons, notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation because it is not anticipated that such action would result in the receipt of useful information.

Since the changes in this document are technical in nature, the anticipated economic impact, if any, is minimal. Therefore, a full regulatory evaluation is not required. For the above reasons and under the criteria of the Regulatory Flexibility Act, the FHWA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 383

Commercial driver's license documents, Commercial motor vehicles, Highways and roads, Motor carriers licensing and testing procedures, Motor vehicle safety.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on: June 14, 1990.

T.D. Larson,

Administrator.

In consideration of the foregoing, the FHWA hereby amends title 49, Code of Federal Regulations, chapter III, subchapter B, part 383, as set forth below.

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

1. The authority citation for 49 CFR part 383 continues to read as follows:

Authority: Title XII of Pub. L. 99–570, 100 Stat. 3207–170; 49 U.S.C. 3102; 49 U.S.C. App. 2505; 49 CFR 1.48.

2. Section 383.77 is amended by revising paragraph (a) to read as follows:

§ 383.77 Substitute for driving skills tests.

* * * * *

(a) An applicant must certify that, during the two-year period immediately prior to applying for a CDL, he/she:

(1) Has not had more than one license (except in the instances specified in § 383.21(b));

(2) Has not had any license suspended, revoked, or canceled;

(3) Has not had any convictions for any type of motor vehicle for the disqualifying offenses contained in § 383.51(b)(2);

(4) Has not had more than one conviction for any type of motor vehicle for serious traffic violations; and

(5) Has not had any conviction for a violation of State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with any traffic accident, and has no record of an accident in which he/she was at fault; and

* * * * *

[FR Doc. 90–14534 Filed 6–21–90; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No. T86–01: Notice 10]

[RIN: 2127–AC32]

Motor Vehicle Theft Prevention; Reporting Requirements for Motor Vehicle Rental and Leasing Companies

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule marks the culmination of a four year effort by this agency to obtain the information necessary to implement authority for exempting a substantial number of self-insured motor vehicle rental and leasing companies form a statutory requirement to file annual theft data reports. To date, all self-insured rental and leasing companies with fleets of 20 or more motor vehicles have been required to file reports. Henceforth, theft reports will be required from only those rental and leasing companies (including franchisees and licensees) which have combined fleets of 50,000 or more

vehicles. This change reduces the number of covered companies to fewer than two dozen.

The agency has taken this action after making two statutorily-specified determinations. First, NHTSA has determined that for those companies with combined fleets of fewer than 50,000 vehicles, the cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer. Second, NHTSA has determined that reports from the largest rental and leasing companies would provide the agency with a representative sampling of the theft experience of rental and leasing companies.

EFFECTIVE DATE: This final rule is effective on July 23, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Gray's phone number is (202) 366–4808.

SUPPLEMENTARY INFORMATION:

Background

The Motor Vehicle Theft Law Enforcement Act of 1984 (Pub. L. 98–547; Theft Act) added title VI to the Motor Vehicle Information and Cost Savings act (15 U.S.C. 2021 *et seq.;* Cost Savings Act). Section 612 of the Cost Savings Act requires insurers to submit annual reports to NHTSA regarding a number of theft-related matters. As set forth in section 612(a)(2) of the Cost Savings Act, the reports are to include theft and recovery data, the rating rules and plans used by insurers to establish premiums for comprehensive insurance coverage for motor vehicles, and actions taken to reduce premiums, among other information.

In addition to including companies that issue insurance policies, the term "insurers" is defined in section 612 to include certain self-insurers, i.e., any person who has a fleet of 20 or more motor vehicles (other than any governmental entity) which are used primarily for rental or lease and which are not covered by theft insurance policies issued by insurers of passenger motor vehicles. (Section 612(a)(3)). The agency estimates that about 4,000 rental and leasing companies are "insurers" under this definition and are therefore required to file annual reports.

Section 612(a)(4) authorizes the agency to exempt certain insurers from submitting the reports, if the agency determines that:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer, and

(2) The insurer's report will not significantly contribute to carrying out the purposes of title IV.

The purpose of this notice is in effect to grant a class exemption to all companies that rent or lease fewer than 50,000 vehicles. This notice concludes a rulemaking proceeding begun with the issuance of a notice of proposed rulemaking on February 3, 1989 (54 FR 5519). NHTSA believes that reports form a representative sample of rental and leasing companies will provide the agency with the necessary information to allow it to fulfill all its obligations under title VI of the Cost Savings Act. NHTSA concludes that reports by many smaller rental and leasing companies do not significantly contribute to carrying out title VI, and that exempting such companies will relieve an unnecessary burden on the vast majority of the companies presently subject to the reporting requirements.

When it issued the initial regulations under title VI, NHTSA did not have sufficient information to allow it to make the first determination in section 612(a)(4), i.e., a determination that the cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer. Absent such information, NHTSA was unable to exempt rental and leasing companies from the reporting requirements. Therefore, in a final rule published on January 2, 1987 (52 FR 59), NHTSA required each rental and leasing company which fell within the definition of "insurer" to file an annual report with the agency. In the preamble to the ifnal rule, the agency stated that it would consider individual requests for exemption from smaller rental and leasing companies, as long as they provided information that would enable the agency to make a determination under section 612(a)(4) that the cost of preparing and furnishing the reports is excessive in relation to the size of the insurer's business.

The agency received approximately 150 petitions for exemption for the October 25, 1987 reporting period. Many of the petitioners requested that their petitions be made applicable to subsequent years. Those petitions from smaller, independent rental and leasing companies were granted, but petitions from large, nation-wide rental and leasing companies and their franchisees or licensees were denied.

Subsequent to the issuance of the January 1987 rule, the agency obtained information on the size of the fleets of rental and leasing companies and the market share for these companies. This information was obtained from the "Automotive Fleet Magazine" (for both rental and leasing companies) and "Travel Trade Business Travel News" (for rental companies only). These publications publish annual tabulations of the data which the motor vehicle rental and leasing companies voluntarily supply to them. Within the rental and leasing community, both publications are regarded as the most accurate data sources available for those businesses. NHTSA tentatively concluded that these sources are sufficiently accurate to determine which rental and leasing companies should be exempted from the theft reporting requirements.

Notice of Proposed Rulemaking

Using these data from the trade publications, the agency published a notice of proposed rulemaking (NPRM) (54 FR 5519, February 3, 1989) that explained how the agency proposed to make the statutory determinations that would exempt most self-insured rental and leasing companies from reporting. In the NPRM, the public was invited to comment on the several tentative conclusions reached by the agency in formulating the proposed rule. First, the agency had tentatively concluded that "Automotive Fleet" and "Travel Trade Business Travel News" were sufficiently accurate to be used in determining which rental and leasing companies should be exempted from the theft reporting requirements. Second, the agency tentatively concluded that franchisors and their franchisees or licensors and their licensees should be treated as single entities for purposes of reporting, with franchisors and licensors responsible for gathering the required data. The agency's rationale for this tentative decision was that since franchisees generally submit periodic reports to the franchisor in any case, it would be relatively simple to include information about theft experience. Further, NHTSA has no data on the size of all franchisees and licensees. Without this information, the agency had no basis to propose exemptions for rental and leasing companies if it were to treat each franchisee or licensee separately. Commenters who disagreed with this approach were asked to discuss how NHTSA could obtain franchisee number and fleet size information and to discuss whether the agency could structure an exemption from the reporting requirements for small rental and leasing companies while requiring reports from all franchisees of large franchisors. NHTSA also sought additonal information on the structure and procedures used by franchise operations in the car rental business.

Third, using the trade publication information, the agency tentatively determined that a representative sample of the theft experience of vehicles other than passenger cars would be obtained if it received reports only from rental and leasing companies (including franchisees and licensees) with fleets of 50,000 or more vehicles.

Fourth, the agency tentatively determined that the costs of requiring rental and leasing companies with fewer than 50,000 vehicles in their fleet to prepare and furnish reports were excessive in relation to the size of the company's business and would not in any way contribute to the agency's carrying out its responsibilities under Title VI of the Cost Savings Act. NHTSA asked commenters who disagreed with this determination to explain why they believed that the purposes of title VI would be furthered by reports from smaller companies.

Public Comments

The agency received a total of seven comments. All commenters supported the 50,000 vehicle threshold, and the general intent to exempt as many companies as possible from reporting requirements. One commenter argued that the costs of franchisors' providing theft data for franchisees is excessive in relation to the size of the business of the insurer, regardless of the company's size.

Chrysler Motors Corporation (Chrysler) and Volkswagen of America, Inc. (Volkswagen), two motor vehicle manufacturers not subject to the reporting requirements, wrote in support of the proposal, especially the 50,000 vehicle threshold. Chrysler offered a comment about the proposed change to wording in § 544.3, the "Application" section that describes companies subject to the reporting requirements of part 544. The NPRM had proposed that self-insured motor vehicle rental and leasing companies subject to reporting requirements be described as:

> * * * persons (including licensees and franchisees) who have a fleet of 20 or more motor vehicles used primarily for rental or lease and not covered by theft insurance policies issued by an insurer of motor vehicles listed in Appendix C.

Chrysler stated that it believed that the agency had erred in developing the wording for the exemption in § 544.3 since it did not correspond with the agency's intent to exclude from reporting requirements those self-insured rental and leasing companies with fleets of fewer than 50,000 vehicles. The agency notes that the description proposed is the statutory definition of "insurer" in section 612(a)(3) of the Theft Act. However, the agency agrees that there may be less confusion if the description of the self-insured rental and leasing companies were more simply worded. Therefore, the regulatory text adopted in this notice simply describes these companies as "the motor vehicle rental and leasing companies listed in Appendix C."

Chrysler also stated the agency's proposal to update Appendix C annually in November to identify the companies which must report the following October did not provide sufficient lead time in preparing the required report for a calendar year. It suggested that the requirements be amended to give a company listed in Appendix C a full year to collect theft and recovery data for reporting to the agency the following year. Under the procedure recommended by Chrysler, a company added to Appendix C in November 1990, would begin collecting data for calendar year 1991 on January 1, 1991, and would file its first report in October 1992.

The agency is not adopting this recommendation, for the following reasons. Although there may be merit in this comment, NHTSA could not adopt the recommended change in this rulemaking because it is not within the scope of the notice. This agency will consider the comment further after the completion of this rulemaking. In doing so, the agency will examine the following factors which are relevant to making a decision about the appropriate interval between the agency's final determination regarding which companies must report and the time that the reports must be submitted. First, the time period proposed in the NPRM would allow a company about 10 months after final notification to gather the needed data for the preceding calendar year, arrange it into the appropriate format, and report it to the agency. Second, the insurers listed in Appendices A and B are required to report under an identical schedule. In order to avoid confusion, the reporting timeframe should be consistent for all reporting companies. The agency's experience with insurers subject to Appendices A and B has been that the time between the finalization of the list of insurers required to report and the due date of the annual theft report has not been a problem.

The National Automobile Dealers Association supported the agency's proposal to exempt all self-insured rental and leasing companies with under 50,000 motor vehicles. The association resubmitted data, originally provided with a petition for reconsideration of the final rule issued by the agency on January 2, 1987 (52 FR 59), on the fleet size of members of the dealers' association. The agency was asked to consider the data to be representative of all franchised car and truck dealer leasing and rental fleets.

U–Haul International, another motor vehicle rental and leasing company, supported the proposed rule, but requested that the company be removed from Appendix C, stating that because of the unique nature of its business, any data it provided could not be extrapolated to the whole industry. The agency is unable to accommodate this request. U–Haul provided no contradictory data regarding the agency's determinations that, for those companies with combined fleets of more than 50,000 vehicles, the cost of preparing and furnishing such reports is not excessive in relation to the size of the business of the insurer, and that a report from U–Haul would not provide the agency with a representative sampling of the theft experience of rental and leasing companies. Since U–Haul is one of the largest rental and leasing companies of trucks, any information U–Haul provides to the agency is necessary to fulfill the requirements of the Theft Act. The agency further notes that despite this comment, U–Haul submitted timely comments on its theft experience for calendar years 1987 and 1988.

The American Automotive Leasing Association, a trade association representing members that lease motor vehicles on a long term basis to commercial businesses, supported the thrust of the proposed amendments.

The law firm of Collier, Shannon, Rill & Scott, commenting on behalf of the American Car Rental Association, asserted that: "The cost of car rental franchisors providing theft data on franchisees is excessive in relation to the size of the insurer's business because that information will not significantly contribute to providing the agency with better insight into car theft problems." It was further stated that obtaining this information from franchisees would impose "significant" costs on franchisors. The commenter also disagreed with NHTSA's statement that it would be simple to expand existing franchisee reporting information to franchisors, to include theft information, asserting that:

> Franchisors have no contractual right under the franchise agreement to such information because it is not material to the operation and fulfillment of the agreement. Franchisors do not report information about the franchisee's vehicles because franchisees own their own vehicles.

In view of these concerns, the commenter suggested that the reporting obligations of franchisors be limited to reporting the theft experience of company-operated facilities.

The agency is unable to assess this commenter's cost arguments since it did not submit any supporting cost data. Further, even though the commenter suggested that the costs would be significant, there was no suggestion that they would be excessive. As to the suggestion of difficulty under current contractual arrangements in obtaining theft information, the commenter did not argue that the task would be an impossible one. Further, no other commenter indicated any problem in obtaining such information from franchisees.

Accordingly, after taking into consideration the public comments, the agency adopts as final the tentative conclusions formulated in the NPRM, and makes final the language for part 544 set forth in the NPRM, including Appendix C, which lists the motor vehicle rental and leasing companies (including licensees and franchisees) which are not exempted with respect to calendar year 1988. In the next several months, the agency will issue a proposal setting forth its tentative determination regarding exemptions and listing the companies that would be required to file a report in October 1990 for the 1989 calendar year.

Regulatory Impacts

1. Costs and Other Impacts

NHTSA has analyzed this rule and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of Department of Transportation regulatory policies and procedures. This final rule implements the agency's policy of ensuring that all insurance companies that are statutorily eligible for exemption from the insurer reporting requirements are in fact exempted from those requirements. On the other hand, those companies that are not statutorily eligible for an exemption continue to be required to file reports.

The agency estimates that costs of these reporting requirements for applicable rental and leasing companies will be reduced from less than 4 million dollars (as was estimated in 1986 for part 544) to less than $550,000 in the first year under the new blanket exemption and lesser amounts in succeeding years. This is well below the threshold of $100 million for classifying a rulemaking action as "major" under the Executive Order. The agency believes that it will be better able to assess the effectiveness of the theft prevention standard as a result of exempting all but 22 motor vehicle rental and leasing companies from theft reporting requirements. The agency believes that the data provided by those rental and leasing companies with over 50,000 motor vehicles will allow NHTSA to adequately evaluate the effect of the standard on those companies and to extrapolate this data to industry as a whole. This should be the case since the data represent the summary of theft experiences of numerous franchisees, licensees, and company-owned locations. The agency also concludes that limiting the reporting requirement to the largest companies will facilitate the agency's efforts to conduct the evaulations and prepare the reports required by section 614 of the Cost Savings Act (15 U.S.C. 2034) after receiving and analyzing the information in these insurer reports. The agency provides a quantified estimate of these benefits in its discussion of the beneficial "significant economic impact" of the rule on small businesses.

2. Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Since this final rule exempts small businesses in the industry from reporting their theft statistics to NHTSA, the agency determines that this final rule will have a beneficial "significant economic impact on a substantial number of small entities." Therefore, pursuant to 5 U.S.C. 604, final regulatory flexibility analysis, the following represents the agency's analysis of the beneficial effect of the final rule on the affected industry.

The Small Business Administration's (SBA) definition of "small business" in this industry are those concerns that gross less than $12.5 million a year. (13 CFR 121.2 under Standard Industrial Code (SIC) Classification 7512—Passenger Car Rental and Leasing, Without Drivers, and SIC 7513—Truck Rental and Leasing, Without Drivers.) The SBA considers franchise operations as independent business concerns. The SBA has no information on fleet size of any motor vehicle rental or leasing concerns. "Automotive Fleet" car and light truck fleet and leasing management magazine, published by Bobit Publishing, report in its 1989 Fact Book that the average revenue for a rental car is $699 per car per month (or $8,388 per year). Therefore, a small business grossing less than $12.5 million per year would have fewer than 1490 passenger cars in its fleet ($12.5 million divided by $8,388). This figure is substantially less than the reporting threshold of 50,000 motor vehicles. Thus, none of the businesses that must report would be considered small businesses. This final rule exempts all but 22 large companies from reporting. The number of small businesses, using the Small Business Administration definition, that this final rule exempts, is unknown. It is somewhat lower than the roughly 4,000 firms identified previously by the agency as having fleet sizes of fewer than 2,500 vehicles.

3. Paperwork Reduction Act

The information collection requirements in this rule have been submitted to and approved by the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements have been approved through July 31, 1990 (OMB approval number 2127–0547).

4. Federalism

This action has been analyzed in accordance with the principles and criteria contain in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

5. Environmental Impacts

In accordance with the National Environmental Policy Act, NHTSA has considered the environmental impacts of this rule and determined that it will not have a significant impact on the quality of the human environment.

List of Subjects in 49 CFR Part 544

Crime insurance, Insurance, Insurance companies, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 544 is amended as follows:

PART 544—[AMENDED]

1. The authority citation for part 544 continues to read as follows:

Authority: 15 U.S.C. 2032; delegation of authority at 49 CFR 1.50.

2. Section 544.3 is revised to read as follows:

§ 544.3 Application

This part applies to the motor vehicle insurance policy issuers listed in Appendices A or B, and to the motor vehicle rental and leasing companies listed in Appendix C.

3. Section 544.6 is amended by revising paragraph (a)(2):

§ 544.6 Contents of insurer reports

(a) * * *

(2) In the case of a motor vehicle rental or leasing company listed in Appendix C, provide the information specified in paragraphs (c), (d)(2)(iv), and (g) of this section for each vehicle type listed in paragraph (b) of this section, for each State in which the company, including any licensee, franchisee, or subsidiary, did business during the reporting period. The information for each listed company shall include all relevant information from any licensee, franchisee, or subsidiary.

* * * * *

4. A new Appendix C is added to part 544, to read as follows:

Appendix C—Motor Vehicle Rental and Leasing Companies Subject to the Reporting Requirements of Part 544

Alamo Rent-A-Car, Inc.
Automotive Rentals, Inc.
Avis Car Leasing—USA
(Subsidiary of Avis, Inc.)
Avis Rent a Car System, Inc.
(Subsidiary of Avis, Inc.)
Budget Rent A Car Corporation
Dollar Rent-A-Car
(Subsidiary of Systems Inc.)
Enterprise Fleets, Inc.
(Subsidiary of Enterprise Leasing Company)
GE Capital Fleet Services
Hertz Penske Truck Leasing, Inc.
(Subsidiary of Hertz Corporation)
Hertz Rent-A-Car
(Subsidiary of Hertz Corporation)
Lease Plan, USA
Lend Lease
McCullagh Leasing, Inc.
National Car Rental System, Inc.
Peterson, Howell & Heather, Inc.
Rent A Car Company
(Subsidiary of Enterprise Leasing Company)
Rent A Car Corporation
(Subsidiary of American International)
Ryder Truck Rental
(Both rental and leasing operations)
Security Pacific Credit Corporation
U-Haul International, Inc.
(Subsidiary of AMERCO)
United States Fleet Leasing Inc.
(Subsidiary of Hertz Corporation, Leasing)
Wheels, Inc.

Issued on: June 18, 1990.

Jeffrey R. Miller,

Deputy Administrator.

[FR Doc. 90-14461 Filed 6-21-90; 8:45 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register
Vol. 55, No. 121
Friday, June 22, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 273

[Amendment No. 321]

Food Stamp Program; Employment and Training Requirements; Nondiscretionary Provisions From the Hunger Prevention Act of 1988

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action proposes changes to Food Stamp Program regulations to implement certain provisions of the Hunger Prevention Act of 1988, Public Law 100–435, 102 Stat. 1645 (1988) (hereinafter, "Pub. L. 100–435"). These proposed rule changes are intended to improve the operation of the Food Stamp Employment and Training (E&T) Program by: (1) Clarifying that educational programs or activities to improve basic skills or employability are allowable food stamp E&T activities; (2) establishing a conciliation procedure to resolve disputes involving participation in the E&T Program; (3) increasing the reimbursement for dependent care costs under the E&T Program up to $160 per dependent per month; (4) excluding any payment made to an E&T participant for work, training or education related expenses or for dependent care from consideration as income under the Food Stamp Program; (5) clarifying that Federal funds made available to a State agency for an E&T educational component cannot be used to supplant non-Federal funds for existing services and activities that promote the purposes of that component; and (6) extending the current performance standards for the placement of E&T participants beyond Fiscal Year 1990 until new performance standards can be developed and issued in accordance with the provisions of Pub. L. 100–435.

DATES: Comments on this proposed rulemaking must be received on or before August 21, 1990, to be assured of consideration.

ADDRESSES: Comments should be submitted to Ellen Henigan, Supervisor, Work Program Section, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, room 718, Alexandria, Virginia 22302. All written comments will be open to public inspection at this same address during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Questions regarding this proposed rulemaking should be directed to Ellen Henigan at the above address or telephone: (703) 756–3762.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291 and Secretary's Memorandum 1512–1

This proposed rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified by the Department as non-major. The annual effect of this rule on the economy will be less than $100 million. This action will not result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. It will not have significant adverse effects on competition, investment, productivity and innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This rule will have a beneficial effect on employment in that it will serve to improve the operations of the Food Stamp E&T Program, thereby improving efforts to assist food stamp recipients obtain and retain employment.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.511. For the reasons set forth in the final rule and related notice to 7 CFR part 3015, subpart V, this program is excluded from the scope of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 through 612). Betty Jo Nelsen, Administrator of the Food and Nutrition Service, has certified that this rule will not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be affected to the extent that they administer the program. Those applicants and participants required to participate in an E&T Program will be affected by this action to the extent that they have dependent care costs associated with E&T Program participation or they require conciliation.

Paperwork Reduction Act

The provision at 7 CFR 273.7(c)(2) and 273.7(g)(1)(ii) to issue a notice of adverse action (form FNS–441) to an individual or household, as appropriate, no later than the tenth calendar day following the end of the conciliation period does not alter or change burden estimates for the FNS–441 as approved under OMB No. 0584–0064. Public reporting burden for FNS–441 is estimated to average .1666 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The remaining provisions of this proposed rule do not contain new or additional reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Background

Income Exclusions for E&T Payments—Section 273.9(c)

Current regulations at 7 CFR 273.9(c) echo the Food Stamp Act provisions that specify the items to be excluded from

household income. Public Law 100–435 (Sections 403(a), 404)c) and 404(f) amends the Food Stamp Act by adding new items to the list of income exclusions. Section 403(a) excludes from household income and payment made to the household under the E&T Program for expenses related to work, training, education or dependent care. Current regulations allow an income exclusion for reimbursements or flat allowances for job or training related expenses. Therefore, this amendment to the Food Stamp Act does not change current E&T operations but merely specifies that E&T Program payments shall be excluded. Section 404(c) further excludes the value of any dependent care services provided or arranged by the State agency in lieu of providing reimbursements or payments for dependent care expenses. Finally, section 404(f) extends the exclusion provision to payments or reimbursements for work related or child care expenses which are made under an employment, education or training program initiated under title IV–A of the Social Security Act (42 U.S.C. 601 et seq.) after September 19, 1988, the date of enactment of the Hunger Prevention Act of 1988 (Pub. L. 100–435). Accordingly, this rule proposes changes to 7 CFR 273.9(c) to provide that any payment made to a household under the E&T Program for work, training or education related expenses or for dependent care shall be excluded from household income, as well as the value of any dependent care services provided or arranged by the State agency in lieu of such payment. This rule also proposes changes to 7 CFR 273.9(c) to exclude any payments or reimbursements for work related or child care expenses made under an employment, education or training program initiated under title IV–A of the Social Security Act after September 19, 1988.

Education Programs or Activities—Section 273.7(f)(1)

Section 404(a)(4) of Public Law 100–435 amends section 6(d) of the Food Stamp Act to clarify that educational programs or activities to improve basic skills or employability are allowable food stamp E&T components. Prior to the enactment of Public Law 100–435, many State agencies were already offering educational programs and activities as components under their E&T Programs. In Fiscal Year 1988, 33 State agencies offered educational components. For Fiscal Year 1989, 34 State agencies included an educational component in their State E&T plan.

Current Food Stamp Program regulations at § 273.7(f)(1)(ii) allow the State agencies to provide educational services within their E&T Program in an effort to expand the job search abilities or employability of individuals subject to E&T. This provision is based on language in the Food Stamp Act of 1977, as amended by the Food Security Act of 1985, which specifies that educational programs "determined by the State agency to expand the job search abilities or employability of those subject to the program" may be included (Pub. L. 99–198, 99 Stat. 1574 (1985)). Consequently, this amendment to the Food Stamp Act does not change current E&T operations but merely emphasizes Congress' intent that educational activities designed to enhance employability be allowable E&T components. This rule proposes changes to 7 CFR 273.7(f)(1) to specify that educational programs or activities to improve basic skills or employability are allowable as E&T components. Congress chose to use broad language in the statute rather than list the allowable educational activities a State agency may offer under its E&T Program. We have included a proposed listing of allowable educational activities in this rulemaking as guidance to the State agencies. This list of educational activities was taken from the legislative history accompanying Public Law 100–435 and is not inclusive. 134 Cong. Rec. S11741 (daily ed. August 11, 1989). Also, changes are proposed to 7 CFR 273.7(f)(1)(ii) to remove references to educational activities or services from the job search training component description since educational activities or services will be included under a separate education component, as discussed under 7 CFR 273.7(f)(1)(vi).

Conciliation—Section 273.7(g); Section 273.7(c)

Section 404(b) of Public Law 100–435 amends section 6(d) of the Food Stamp Act to require each State agency to establish conciliation procedures for the resolution of disputes involving the participation of individuals in the E&T Program.

Current regulations at 7 CFR 273.7(g) require the State agency to provide a noncomplaint individual or household with a notice of adverse action within 10 days of determining the noncompliance was without good cause. There is no requirement for conciliation in the food stamp regulations although some State agencies have incorporated an informal conciliation process into their E&T Program.

The legislative history accompanying Public Law 100–435 provides a brief description of the conciliation procedures envisioned by Congress. 134 Cong. Rec. H6842–43, S11741, S11745 (daily ed. August 11, 1988). Several members of Congress explained that whenever a State agency finds there has been apparent noncompliance in meeting a work related requirement or where there is a dispute relating to a household member's participation in E&T, the State agency would attempt to contact the non-complying household member and to arrange a meeting in an effort to work with the member to obtain compliance or otherwise resolve the dispute.

It is also noted in the legislative history that there is a longstanding policy in the Aid to Families with Dependent Children (AFDC) Program (specifically in the Work Incentive Program (WIN), which is being replaced on a State-by-State basis by the Jobs Opportunities and Basic Skills (JOBS) Program under the Family Support Act of 1988, Public Law 100–485, 102 Stat. 2343 (1988)) to emphasize conciliation practices. It is pointed out that in some States, these conciliation processes have resulted in the successful resolution of cases where recipients initially failed to comply with work requirements. However, if the conciliation process is unsuccessful, and the household member is not found to have good cause for noncompliance, Congress explains that the State agency would then send a notice of adverse action, thereby initiating the procedure to terminate benefits. The individual or the household would retain the normal rights to appeal the disqualification or to end the disqualification by curing the noncompliance.

Accordingly, this rule proposes changes to 7 CFR 273.7(g) to require State agencies to develop a conciliation process for food stamp work registrants. The purpose of the conciliation effort is to determine the reason(s) the work registrant failed or refused to comply with the E&T requirements and to provide an opportunity to resolve the noncompliance so that the work registrant may participate in an E&T component and work towards self-sufficiency rather than be sanctioned. This rule proposes that the State agencies develop their own conciliation procedures which may conform to AFDC practices. At a minimum, however, the State agency must contact the noncomplying household member to determine the reason(s) for the noncompliance and determine whether good cause for the noncompliance exists. If good cause does not exist, the State agency shall inform the household member of the pertinent E&T requirements and the consequences of failing to comply. The household

member must be informed of the action(s) necessary for compliance and the date by which compliance must be achieved to avoid the notice of adverse action. This date may not exceed the end of the conciliation period.

This rule proposes a maximum time frame for the conciliation period during which the State agency must determine if good cause for the noncompliance exists and resolve the noncompliance. The proposed change allows the State agency to establish a conciliation period that lasts no longer than 20 calendar days and which begins the day following the date the State agency learns of the noncompliance. The Department believes 20 days is sufficient time for a State agency and the household member to conciliate and resolve the noncompliance. A longer period of time would unnecessarily delay the sanction process and allow an individual to continue to receive benefits while not complying with Food Stamp Program requirements. The legislative history supports a conciliation procedure that does not delay the sanction process. 134 Cong. Rec. H6842–43 (daily ed. August 11, 1988) (statements by Cong. Panetta, Cong. Emerson). The State agency may design a conciliation process with a conciliation period of less than 20 calendar days.

The proposed rule also provides that if the work registrant does not comply during the conciliation period, the State agency must issue a notice of adverse action to the individual or household no later than 10 calendar days following the end of the conciliation period. If it is apparent that an individual will not comply, i.e., the individual refuses to comply and does not have good cause, the State agency may end the conciliation period early and issue the notice of adverse action. The casefile must document the individual's refusal to comply. In addition, the State agency may concel the notice of adverse action if it is able to verify that the individual complied with the E&T requirements subsequent to the end of the conciliation period. To achieve compliance, the noncomplying household member must perform a verifiable act of compliance, such as attending a job search training session or submitting a report of job contacts. Verbal commitment by the household member is not sufficient, unless the household member is prevented from complying by circumstances beyond his or her control, such as the unavailability of a suitable component.

This rule also proposes changes to 7 CFR 273.7(c)(4) to require the State agencies to describe the conciliation procedures in their State E&T Plans. To the extent possible, State agencies should design conciliation procedures for the E&T Program that will be compatible with the conciliation process State agencies that administer the AFDC Program have or will establish for the JOBS Program mandated by the Family Support Act of 1988.

Changes have been proposed to the regulations at 7 CFR 273.7(c)(2), which describe the State agency responsibilities, to reflect the addition of a conciliation period to the E&T process under 7 CFR 273.7(g)(1).

Funding for Educational Programs or Activities—Section 273.7(d)(1)(i)

As discussed earlier, Public Law 100–435 specifies that State agencies may include in their EST Programs educational programs or activities to expand job search abilities or employability by improving basic skills. However, Congress does not want Food Stamp Program funds to supplant State or local funds previously used to finance a component that includes existing educational services and activities. Section 404(b)(2) of Public Law 100–435 prohibits supplanting non-Federal funds with Federal funds to pay for existing educational services and activities that promote the purposes of the E&T component authorized under section 6(d)(4)(B)(v) of the Food Stamp Act of 1977, as amended. This component provides educational programs or activities to improve basic skills or employability for food stamp work registrants. This amendment reinforces current regulations at 7 CFR 273.7(d)(1)(i)(F) which prohibit the supplanting of State or local funds dedicated to education programs.

Accordingly, this rule proposes changes to 7 CFR 273.7(d)(1)(i)(F) to better reflect Congress' instructions that E&T funds may not be used to supplant State or local funds used for existing educational services and activities that promote the purposes of the E&T education component authorized under section 6(d)(4)(B)(v) of the Food Stamp Act of 1977, as amended.

Participant Reimbursement—Section 273.7(d)(1)(ii)

Current regulations at 7 CFR 273.7(d)(1)(ii) require the reimbursement of expenses for costs (including dependent care) that are reasonably necessary and directly related to participation in the E&T Program up to $25 per participant per month. The State agency may reimburse participants for expenditures beyond $25 per month; however, only costs up to but not in excess of $25 per month per participant shall be subject to Federal cost sharing. Public Law 100–435 did not change the current $25 per month limit on the Federal cost sharing of reimbursements to E&T participants for transportation and costs other than dependent care. Any expense covered by a reimbursement under 7 CFR 273.7(d)(1)(ii) shall not be deductible in accordance with 7 CFR 273.10(d)(1)(i).

Section 404(c) of Public Law 100–435 amends section 6(d) of the Food Stamp Act to increase the amount of reimbursement for dependent care expenses allowable under Federal cost sharing. Effective July 1, 1989, State agencies shall provide payments or reimbursements to E&T participants (including volunteers) for the actual costs of all necessary dependent care expenses up to but not in excess of $160 per dependent per month. State agencies may reimburse participants for costs in excess of this amount, however, only costs up to but not in excess of $160 per dependent per month shall be subject to Federal cost sharing. This rule proposes a requirement that individuals be informed that allowable expenses up to the $160 per dependent per month limit for dependent care and the $25 per month limit for transportation and other costs will be reimbursed by the State agency upon the presentation of appropriate documentation.

This rule also proposes limits for dependent care reimbursements. A dependent care reimbursement shall not be provided for a dependent age 13 or older unless the dependent is physically and/or mentally incapable of caring for himself or herself or subject to court supervision. This provision is consistent with regulations recently published by the Family Support Administration of the Department of Health and Human Services for the Jobs Opportunities and Basic Skills Training (JOBS) Program (54 FR 42146, October 13, 1989). That final rule implemented a limit on the guarantee of child care to families with dependent children under 13 and children with special needs. To allow for greater consistency between the two programs we are proposing the adoption of the same limits for dependent care reimbursements under the Food Stamp E&T Program.

There is no proposed age limit for dependents who are physically and/or mentally incapable of caring for themselves or who are under court supervision and require dependent care in order for a responsible household member to participate in the E&T Program. In keeping with current verification requirements, verification of

the physical and/or mental incapacity is necessary for dependents who are age 13 or older if the physical and/or mental incapacity is questionable. Similarly, verification of a court imposed requirement for the supervision of a dependent age 13 or older is necessary if the need for dependent care is questionable.

In addition, we are proposing the adoption of a provision from the JOBS Program allowing a dependent care reimbursement for dependents age 13 or older who are subject to court supervision. These dependents have an officially established need for special supervision that would require dependent care in order for a responsible household member to participate in the E&T Program.

The Act further specifies that the caretaker relative of a dependent in an AFDC household who resides in a local area where an AFDC employment and training program is in operation or was in operation on September 19, 1988, the date of enactment of Public Law 100–435, would not be eligible for the dependent care reimbursement. This provision has been incorporated in this proposed rule.

This rule also proposes a change whereby an E&T participant would not be entitled to the dependent care reimbursement if a member of the E&T participant's food stamp household provides the dependent care services. In many instances the household does not incur an actual out-of-pocket expense when a service is provided by a household member. One household member may actually make a payment to another which might be characterized as an "expense". However, since another member of the same household receives the payment there is no net change in the household's income for food stamp purposes. Therefore, no reimbursement is necessary.

This rule proposes a change to 7 CFR 273.7(d)(1)(ii) to limit the dependent care reimbursements a household may receive in a month. If more than one household member is required to participate in an E&T Program, the household shall not receive more than the actual cost of such expenses up to $160 per dependent per month (or the optional reimbursement amount above $160 to be paid by the State agency). The State agency must verify the E&T status of other household members prior to issuing these payments in order to avoid unnecessary and duplicative payments to the household. No household is entitled to more than one reimbursement per dependent per month.

Changes are also being proposed to implement a provision of section 404(c) of Public Law 100–435 which allows the State agencies to provide or arrange for dependent care services in lieu of providing a reimbursement to the E&T participant for dependent care. The State agency may provide dependent care services directly to the household through State-operated dependent care facilities (including local agency-operated facilities) or arrange for dependent care through contracted providers. State agencies may urge, but not require, participants to utilize State licenced dependent care facilities, where available. The State agency will receive 50 percent of actual costs up to $80 per dependent per month in Federal funding as reimbursement for dependent care services provided or arranged for by the State agency. This cost to the State agency must be claimed on the SF–269, Financial Status Report, under the column designated for dependent care reimbursement expenses. This rule proposes changes to 7 CFR 273.7(d)(1)(ii) accordingly.

This rule also proposes a list of the types of allowable costs to be reimbursed under 7 CFR 273.7(d)(1)(ii)(A). This list is intended as a guide for the State agencies and is not inclusive. This list conforms to the list of allowable costs that are reimbursable under the participant reimbursement provision of the optional workfare program regulations at 7 CFR 273.22(f)(4).

Section 404(c) of Public Law 100–435 also provides that individuals may not be required to participate in a component in which they would incur E&T costs that exceed the allowable reimbursable amount paid by the State agency. This rule proposes changes to provide that these individuals shall be placed, if possible, in another suitable component in which their monthly E&T expenses would not exceed the allowable reimbursable amount paid by the State agency. If a suitable component is not available, these individuals shall be exempted from participation until a suitable component is available or their circumstances change and their monthly E&T expenses no longer exceed the allowable reimbursable amount to be paid by the State agency. Further, Congress has suggested that mandatory E&T participants must be informed that they shall be exempted from E&T requirements if their expenses exceed the allowable reimbursable amounts. 134 Cong. Rec. S11742 (daily ed. August 11, 1988) (statement of Sen. Leahy). This proposed rule incorporates that provision. Individuals exempted because their monthly expenses exceed the allowable reimbursable amounts may volunteer to participate in the E&T Program. The volunteer must be informed that his/her expenses in excess of the allowable reimbursable amounts will not be reimbursed. Any allowable expense incurred and not reimbursed shall be considered in determining a dependent care deduction amount under 7 CFR 273.9(d)(4). Furthermore, as a volunteer the individual cannot be sanctioned for failure to complete the component or comply with any of the E&T requirements. Accordingly, this rule proposes changes to 7 CFR 273.7(d)(1)(ii) and replaces the term "child care" with "dependent care" in conformance with Public Law 100–435.

This rule also proposes a requirement that the State agency advise the E&T participant that he or she may have Federal tax responsibilities. These responsibilities may include the withholding of Social Security taxes and Federal income taxes from wages paid to a dependent care provider and notifying the Internal Revenue Service about these wages. The State agency may impose additional notice requirements for State tax responsibilities affecting E&T participants.

Performance Standards—Section 273.7(o)(7)

Current regulations establish performance standards through Fiscal Year 1990. Section 404(d) of Public Law 100–435 holds those standards in effect until the Department implements new performance standards to be developed and issued in accordance with provisions contained in Public Law 100–435. This rule proposes changes to 7 CFR 273.7(o)(7) to incorporate the above amendment and maintain a 50 percent performance standard until the new standards are implemented.

Implementation

The Department intends that the provisions of the final rulemaking resulting from the proposals contained in this rulemaking be implemented by all State agencies no later than 60 days following publication of the final rulemaking.

As required by Public Law 100–435, the provisions contained in §273.7(d)(1)(ii)(A) and §273.9(c)(5)(i) (A) and (F), which implement section 404(c) of the Hunger Prevention Act of 1988, are effective and must be implemented retroactively to July 1, 1989. Since prior notice and comment rulemaking could

not be completed before the statutory effective date for this amendment, the Department issued directives on February 15, 1989 and May 26, 1989 instructing the State agencies to implement the above provisions on July 1, 1989. The State agencies were not directed to implement the remaining provisions of Public Law 100–435, therefore, the remaining provisions are effective October 1, 1988 and must be implemented no later than 60 days following publication of the final rulemaking.

List of Subjects in 7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

Accordingly, 7 CFR part 273 is proposed to be amended as follows:

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

1. The authority citation for part 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2029.

2. In § 273.7:

a. Paragraph (c)(2) is amended by revising the third sentence and adding two new sentences between the third and fourth sentences;

b. A new paragraph (c)(4)(xii) is added;

c. Paragraph (d)(1)(i)(F) is amended by revising the first sentence;

d. Paragraph (d)(1)(ii)(A) is revised;

e. Paragraph (d)(1)(ii)(B) is revised;

f. Paragraph (d)(1)(ii)(D) is amended by removing the word "child" in the two places it appears and adding in its place the word "dependent";

g. Paragraph (f)(1)(ii) is amended by removing the words "Education components" in the third sentence and adding in its place the words "Job search training activities"; and removing the word "education" from the last sentence and adding in its place the words "job search training activities";

h. A new paragraph (f)(1)(vi) is added;

i. Paragraph (f)(2)(iii) is amended by removing the phrase "and the unavailability of child care" and adding in its place the phrase "the unavailability of dependent care, and monthly E&T expenses that exceed the allowable reimbursable amounts specified in paragraphs (d)(1)(ii)(A)(*1*) and (d)(1)(ii)(A)(*2*)";

j. Paragraph (g)(1) is revised; and

k. Paragraph (o)(7) is amended by revising the last sentence.

The additions and revisions read as follows:

§ 273.7 Work requirements.

* * * * *

(c) * * *

(2) * * * The State agency shall initiate conciliation procedures, pursuant to paragraph (g)(1)(ii) of this section, upon determining that an individual has not complied with E&T requirements. The State agency shall issue a notice of adverse action to the individual or household, as appropriate, no later than the tenth calendar day following the end of the conciliation period. If the State agency verifies that compliance was achieved subsequent to the end of the conciliation period, the notice of adverse action may be cancelled.* * *

* * * * *

(4) * * *

(xii) The procedures developed by the State agency under paragraph (g)(1)(ii) of this section for conciliation. To the extent possible, State agencies should design conciliation procedures for the E&T Program that will be compatible with the conciliation process that State agencies that administer the AFDC Program will establish for the Job Opportunities and Basic Skills Training (JOBS) program as mandated by the Family Support Act of 1988.

* * * * *

(d) * * *

(1) * * *

(i) * * *

(F) Federal funds made available to a State agency under this section to operate a component under paragraph (f)(1)(vi) of this section shall not be used to supplant non-Federal funds for existing educational services and activities that promote the purposes of this component. * * *

(ii) * * *

(A) The State agency shall provide payments to participants in its E&T Program, including applicants required to perform job search and volunteers, for expenses that are reasonably necessary and directly related to participation in the E&T Program. These payments may be provided as a reimbursement for expenses incurred or in advance as payments for anticipated expenses in the coming month. The State agency must inform each E&T participant that allowable expenses up to the amounts specified in paragraphs (d)(1)(ii)(A)(*1*) and (d)(1)(ii)(A)(*2*) of this section will be reimbursed by the State agency upon presentation of appropriate documentation. Reimbursable costs may include, but are not limited to, dependent care costs, transportation, and other work, training or education related expenses such as uniforms, personal safety items or other necessary equipment, and books or training manuals. These costs shall not include the cost of meals away from home. The State agency may reimburse participants for expenses beyond the amounts specified in paragraphs (d)(1)(ii)(A)(*1*) and (d)(1)(ii)(A)(*2*) of this section, however, only costs which are up to but not in excess of the amounts specified in this section shall be subject to Federal cost sharing. Reimbursement shall not be provided from E&T grants provided under paragraph (d)(1)(i) of this section. Any expense covered by a reimbursement under this section shall not be deductible pursuant to 7 CFR 273.10(d)(1)(i). The State agency shall inform all mandatory E&T participants that they shall be exempted from E&T participation if their monthly expenses that are reasonably necessary and directly related to participation in the E&T Program exceed the allowable reimbursement amount. Reimbursements shall be provided as follows:

(*1*) The actual costs of such dependent care expenses that are determined by the State agency to be necessary for the participation of an household member in the E&T Program up to $160 per dependent per month. A dependent care reimbursement shall be provided to an E&T participant for all dependents requiring dependent care unless otherwise prohibited by this section. A reimbursement shall not be provided for a dependent age 13 or older unless the dependent is physically and/or mentally incapable of caring for himself or herself or under court supervision. A reimbursement shall be provided for all dependents who are physically and/or mentally incapable of caring for themselves or who are under court supervision, regardless of age, if dependent care is necessary for the participation of an household member in the E&T Program. Verification of the physical and/or mental incapacity shall be obtained for dependents age 13 or older if the physical and/or mental incapacity is questionable. Also, verification of a court imposed requirement for the supervision of a dependent age 13 or older is necessary if the need for dependent care is questionable. If moe than one household member is required to participate in an E&T Program, the household shall not receive more than the actual cost of such expenses up to $160 per dependent per month (or the optional reimbursement amount above $160 to be paid by the State agency). An individual who is the caretaker relative of a dependent in a family receiving benefits under part A of title IV of the Social

Security Act [42 U.S.C. 601 *et seq.*] in a local area where an employment, training, or education program under title IV of such Act is in operation, or was in operation on September 19, 1988, is not eligible for such reimbursement. An E&T participant is not entitled to the dependent care reimbursement if a member of the E&T participant's food stamp household provides the dependent care services. The State agency must verify the participant's need for dependent care and the cost of the dependent care prior to the issuance of the reimbursement. The verification must include the name and address of the dependent care provider, the cost and the hours of service, e.g., five hours per day, five days per week for two weeks. A participant may not be reimbursed for dependent care services beyond that which is required for participation in the E&T Program. In lieu of providing reimbursements for dependent care expenses, a State agency may arrange for dependent care through providers by the use of purchase of service contracts, by providing vouchers to the household or by other means. A State agency may not require that participants use State licensed facilities to be eligible for dependent care reimbursements. The State agency shall advise the E&T participant that he or she may have Federal tax responsibilities. The State agency may impose additional notice requirements for State tax responsibilities affecting E&T participants. The State agency may claim 50 percent of actual costs up to $80 per dependent per month in Federal matching for dependent care services provided or arranged for by the State agency.

(*2*) The actual costs of transportation and other costs (excluding dependent care costs) that are determined by the State agency to be necessary and directly related to participation in the E&T Program up to $25 per participant per month. Such costs shall be the actual costs of participation unless the State agency has a method approved in its State plan for providing allowances to participants to reflect approximate costs of participation. If a State agency has an approved method to provide allowances rather than reimbursements, it must provide participants an opportunity to claim actual expenses which exceed the standard, up to $25 or such other maximum level or reimbursements which is established by the State agency.

(B) Persons for whom allowable monthly expenses in an E&T component exceed the amounts specified under paragraphs (d)(1)(ii)(A)(*1*) and (d)(1)(ii)(A)(*2*) of this section shall not be required to participate in that component. These individuals shall be placed, if possible, in another suitable component in which the individual's monthly E&T expenses would not exceed the allowable reimbursable amount paid by the State agency. If a suitable component is not available, these individuals shall be exempted from E&T participation until a suitable component is available or the individual's circumstances change and his/her monthly expenses do not exceed the allowable reimbursable amount paid by the state agency. Individuals exempted because their monthly expenses exceed the allowable reimbursable amounts specified under paragraphs (d)(1)(ii)(A)(*1*) and (d)(1)(ii)(A)(*2*) of this section may volunteer to participate in the E&T Program. The volunteer must be informed that his/her allowable expenses in excess of the reimbursable amounts will not be reimbursed. Dependent care expenses incurred that are otherwise allowable but not reimbursed because they exceed the reimbursable amount specified under paragraph (d)(1)(ii)(A)(*1*) shall be considered in determining a dependent care deduction under 7 CFR 273.9(d)(4).

* * * * *

(f) * * *

(1) * * *

(vi) Educational programs or activities to improve basic skills or otherwise improve employability including educational programs determined by the State agency to expand the job search abilities or employability of those subject to the program as specified under paragraph (f) of this section. Allowable educational activities may include, but are not limited to, high school or equivalent educational programs, remedial education programs to achieve a basic literacy level, and instructional programs in English as a second language. Only educational components that directly enhance the employability of the participants are allowable. A direct link between the education and job-readiness must be established for a component to be approved.

* * * * *

(g) * * *

(1) Noncompliance with Food Stamp Program work regulations.

(i) If the State agency determines that an individual other than the head of household as defined in § 273.1(d) has refused or failed without good cause to comply with the requirements imposed by this section and by the State agency, that individual shall be ineligible to participate in the Food Stamp Program for two months, as provided in this paragraph, and is treated as an ineligible household member, per § 273.1(b)(2). If the head of household fails to comply, the entire household is ineligible to participate as provided in this paragraph. Ineligibility in both cases shall continue either until the member who caused the violation complies with the requirement as specified in paragraph (h) of this section, leaves the household, becomes exempt from work registration through paragraph (b) of this section, other than through the exemptions of paragraphs (b)(1)(iii) or (b)(1)(v), or for two months, whichever occurs earlier. A household determined to be ineligible due to failure to comply with the provisions of this section may reestablish eligibility if a new and eligible person joins the household as its head of household, as defined in § 273.1(d)(2). If any household member who failed to comply joins another household as head of the household, that entire new household is ineligible for the remainder of the disqualification period. If the member who failed to comply joins another household where he/she is not head of household, the individual shall be considered an ineligible household member per § 273.1(b)(2).

(ii) The State agency shall develop conciliation procedures to be used upon determining that an individual has refused or failed to comply with an E&T requirement. The purpose of the conciliation effort is to determine the reason(s) the work registrant did not comply with the E&T requirement and provide the noncomplying individual with an opportunity to comply prior to the issuance of the Notice of Adverse Action. The conciliation period shall begin the day following the date the State agency learns of the noncompliance and shall continue for a period not to exceed 20 calendar days. Within this conciliation period, the State agency must, at a minimum, contact the noncomplying household member to ascertain the reason(s) for the noncompliance and determine whether good cause for the noncompliance exists, as discussed in paragraph (m) of this section. If good cause does not exist, the State agency shall inform the household member of the pertinent E&T requirements and the consequences of failing to comply. The household member must be informed of the action(s) necessary for compliance and the date by which compliance must be achieved to avoid the notice of adverse action. This date may not exceed the end of the conciliation period. If it is

apparent that the individual will not comply (i.e., the individual refuses to comply and does not have good cause), the State agency may end the conciliation period early and proceed with the issuance of the notice of adverse action under paragraph (g)(1)(iii) of this section. The casefile must document the individual's refusal to comply.

(iii) If the work registrant does not comply during the conciliation period, the State agency shall issue a notice of adverse action to the individual or household, as specified in § 273.13, no later than the tenth calendar day following the end of the conciliation period. The notice of adverse action may be cancelled if the State agency is able to verify that compliance was achieved subsequent to the end of the conciliation period. To avoid the notice of adverse action, the noncomplying household member must perform a verifiable act of compliance, such as attending a job search training session or submitting a report of job contacts. Verbal commitment by the household member is not sufficient, unless the household member is prevented from complying by circumstances beyond the household member's control, such as the unavailability of a suitable component. The notice of adverse action shall contain the particular act of noncompliance committed, the proposed period of disqualification and shall specify that the individual or household may reapply at the end of the disqualification period. Information shall also be included on or with the notice describing the action which can be taken to end or avoid the sanction, and procedures contained in paragraph (h) of this section. The disqualification period shall begin with the first month following the expiration of the 10-day adverse notice period, unless a fair hearing is requested.

(iv) Each individual or household has a right to a fair hearing to appeal a denial, reduction, or termination of benefits due to a determination of nonexempt status, or a State agency determination of failure to comply with the work registration or employment and training requirements of this section. Individuals or households may appeal State agency actions such as exemption status, the type of requirement imposed, or State agency refusal to make a finding of good cause if the individual or household believes that a finding of failure to comply has resulted from improper decisions on these matters. The State agency or its designee operating the relevant component shall receive sufficient advance notice to either permit the attendance of a representative or ensure that a representative will be available for questioning over the phone during the hearing. A representative of the appropriate agency shall be available through one of these means. A household shall be allowed to examine its E&T component casefile at a reasonable time before the date of the fair hearing, except for confidential information (which may include test results) that the agency determines should be protected from release. Information not released to a household may not be used by either party at the hearing. The results of the fair hearing shall be binding on the State agency.

* * * * *

(o) * * *

(7) * * * The performance standards established for FY 1990 shall remain in effect for each subsequent fiscal year until new performance standards are implemented in accordance with the Hunger Prevention Act of 1988 (Pub. L. 100-435) on April 1, 1991.

* * * * *

3. In § 273.9:

a. Paragraph (c)(5)(i)(A) is amended by adding the words ", including reimbursements made to the household under § 273.7(d)(1)(ii)," after the words "flat allowances";

b. A new paragraph (c)(5)(i)(F) is added;

c. Paragraph (c)(5)(ii)(A) is revised; and

d. A new paragraph (c)(15) is added.

The additions and revisions read as follows:

§ 273.9 Income and deductions.

* * * * *

(c) * * *

(5) * * *

(i) * * *

(F) Reimbursements made to the household under § 273.7(d)(1)(ii) for expenses necessary for participation in an education component under the E&T Program.

(ii) * * *

(A) No portion of benefits provided under title IV of the Social Security Act, to the extent such benefit is attributed to an adjustment for work-related or child care expenses (except for payments or reimbursements for such expenses made under an employment, education or training program initiated under such title after September 19, 1988), shall be considered excludable under this provision.

* * * * *

(15) Any payment made to an E&T participant under § 273.7(d)(1)(ii) for costs that are reasonably necessary and directly related to participation in the E&T Program. These costs include, but are not limited to, dependent care costs, transportation, other expenses related to work, training or education, such as uniforms, personal safety items or other necessary equipment, and books or training manuals. These costs shall not include the cost of meals away from home. Also, the value of any dependent care services provided for or arranged under § 273.7(d)(1)(ii)(A)(*1*) would be excluded.

* * * * *

Dated: June 18, 1990.

Betty Jo Nelsen,

Administrator.

[FR Doc. 90-14467 Filed 6-21-90; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 1036

[DA-90-022]

Milk in the Eastern Ohio-Western Pennsylvania Marketing Area; Proposed Temporary Revision of Supply Plant Shipping Percentages and Cooperative Association Delivery Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed temporary revision of rules.

SUMMARY: This notice invites written comments on a proposal to increase temporarily the percentage of producer milk receipts that must be shipped by pool supply plants operated by both proprietary and cooperative association handlers under the Eastern Ohio-Western Pennsylvania Federal milk order. Beginning with the month of September 1990, the percentage of milk that must be shipped by pool supply plants to fluid milk processing plants would be increased from 40 percent to 50 percent during the months of September through November, and from 30 percent to 40 percent in other months. The monthly percentage of producer milk that is handled by a cooperative association that must be delivered to distributing plants in order to qualify plants operated by the cooperative association for pooling would also be increased by 10 percentage points, from 35 percent to 45 percent. The action was requested by a proprietary handler who operates a fluid milk processing plant that is pooled under the order. Proponent contends that this action is needed to assure consumers of an adequate supply of fluid milk products.

DATES: Comments are due no later than July 23, 1990.

ADDRESSES: Comments (two copies) should be sent to: USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–7183.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action would provide greater assurance that an adequate supply of fresh fluid milk will be available to consumers.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and paragraph (f) of § 1036.7 of the order, the temporary revision of certain provisions of the order regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area is being considered, beginning with the month of September 1990.

All persons who desire to submit written data, views or arguments about the proposed revision should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 30th day after pubication of this notice in the **Federal Register.**

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The provisions proposed to be revised are the pool supply plant shipping percentages set forth in § 1036.7(b) and the delivery percentage required of cooperative associations operating pool manufacturing plants pursuant to § 1036.7(d). The revisions would be effective beginning with the month of September 1990. The specific revisions would increase the supply plant shipping percentages by 10 percentage points, from 40 percent to 50 percent during the months of September through November, and from 30 percent to 40 percent during all other months. The percentage of a cooperative association's producer milk that must be shipped to pool distributing plants or to nonpool plants for Class I purposes if the plants of the cooperative are to be considered pool plants would be also be increased by 10 percentage points, from 35 percent to 45 percent, for all months. The cooperative association's manufacturing plants could also be qualified for pooling if the 45-percent delivery requirement had been met for the immediately preceding 12-month period.

Section 1036.7(f) of the Eastern Ohio-Western Pennsylvania milk order allows the Director of the Dairy Division to increase or decrease the order's minimum pooling requirements by up to 10 percentage points during any month to obtain needed shipments or to prevent uneconomic shipments.

United Dairy, Inc., a proprietary handler who operates a pool distributing plant at which more than 90 percent of the milk receipts are disposed of for Class I purposes, requested that the percentage of supply plant's and cooperative association producer milk that is required to be shipped to fluid milk plants be increased temporarily by 10 percentage points to enable handlers to continue providing consumers with an adequate supply of fluid milk products.

The minimum performance standards for pool supply plants and delivery requirements for cooperative associations operating pool plants were increased temporarily for the months of November 1989 through February 1990 at the request of proponent. Proponent handler contends that the market's milk production is running well below a year ago. The handler claims that the shortage this fall will be at least as severe as last year and possibly may be worse. In anticipation of this tight supply/demand situation, United Dairy has requested that the proposed revision be effective at the beginning of the shipping season which starts on September 1.

The market's major cooperative, from whom proponent handler buys most of its milk, has informed the handler that because milk supplies are again expected to fall short of fluid demand this year the cooperative will be unable to guarantee a supply of all of the handler's Class I milk needs this fall. Proponent further indicates that during the past year it tried without success to establish a long-term supply relationship with a major cheese manufacturing plant operator in an attempt to replace anticipated supply shortfalls.

In view of the foregoing, it may be appropriate to increase the shipping percentages for pool supply plants and delivery requirements for plants operated by cooperative associations, beginning with the month of September 1990, to obtain needed shipments of milk. Since proponent did not specify how long the higher standards should apply, interested parties are invited to comment on this aspect of the proposal in addition to commenting on the need for the proposed temporary revision.

List of Subjects in 7 CFR Part 1036

Dairy products, Milk, Milk marketing orders.

The authority citation for 7 CFR part 1036 continues to read as follows:

Authority: (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

Signed at Washington, DC, on June 19, 1990.

W. H. Blanchard,

Director, Dairy Division.

[FR Doc. 90–14504 Filed 6–21–90; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1005

[Docket Nos. AO–388–A1; AO–388–A1–RO1; DA–88–123]

Milk in the Carolina Marketing Area; Decision on Proposed Amendments to Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision adopts a Federal milk order for the Carolina marketing area, which includes all the territory in the States of North Carolina and South Carolina. Ten dairy farmer organizations representing about 90 percent of the dairy farmers who are expected to have their milk priced under the milk order proposed the new milk order. The proposed order was considered at public hearings held April 17–20, April 24–25, and August 22, 1989. On the basis of evidence obtained at the hearings, the Department has concluded that a Federal milk order is needed to provide stable and orderly conditions for the marketing of milk in the proposed area. A referendum will be conducted to determine whether producers who supplied milk for the proposed area during March 1990 favor the issuance of an order.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–2089.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The proposed rule would promote orderly marketing of milk by producers and regulated handlers.

Paperwork Reduction Act

Information collection requirements contained in this regulation (§§ 1005.1 through 1005.94) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0581–0032.

Prior documents in this proceeding:

Notice of Hearing: Issued March 13, 1989; published March 17, 1989 (54 FR 11206).

Notice of Reopened Hearing: Issued August 10, 1989; published August 16, 1989 (54 FR 33709).

Recommended Decision: Issued March 21, 1990; published March 28, 1990 (55 FR 11506).

Preliminary Statement

Two public hearings were held upon a proposed tentative marketing agreement and order regulating the handling of mik in the Carolina marketing area. The initial hearing on the proposed Carolina order was held at Charlotte, North Carolina, on April 17–20 and April 24–25, 1989, pursuant to a notice of hearing issued March 13, 1989 (54 FR 11206). The second hearing was a reopening of the first hearing for the limited purpose of considering proposals that would change the manner in which the Class II milk price is determined and announced under the proposed Carolina order. The hearing was held at Alexandria, Virginia, on August 22, 1989, pursuant to a notice of reopened hearing issued August 16, 1989 (54 FR 33709).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, on March 21, 1990, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. Under the subheading "3(a) Handlers to be regulated and milk to be priced and pooled.", "Pool Plant", three new paragraphs are added after paragraph 32.

2. Under the subheading "3(a) Handlers to be regulated and milk to be priced and pooled.", "Producer-handler.", a new paragraph is added at the end of the discussion.

3. Under the subheading "3(a) Handlers to be regulated and milk to be priced and pooled.", "Producer milk.", two new paragraphs are added after paragraph 17.

4. Under the subheading "3(c) Pricing of milk.", "Class I price and in-area location adjustments.", two new paragraphs are added at the end of the discussion.

5. Under the subheading "3(d) Distribution of proceeds to producers.", "Computation of uniform price." two new paragraphs are added at the end of the discussion.

6. Under the subheading "3(d) Distribution of proceeds to producers.", "Base and excess plan.", paragraph 7 is revised, seven new paragraphs are added after paragraph 7, paragraphs 9, 10 and the one at the end of the discussion are revised.

7. Under the subheading "3(d) Distribution of proceeds to producers.", "Multiple component pricing.", seven new paragraphs are added at the end of the discussion.

The material issues on the record of the hearing relate to:

1. Whether the handling of milk produced for sale in the proposed marketing area is in the current of interstate commerce, or directly burdens, obstructs, or affects interstate commerce in milk or its products;

2. Whether marketing conditions show the need for issuance of a milk marketing agreement or order which will tend to effectuate the policy of the Act; and

3. If an order is issued what its provisions should be with respect to:

(a) Handlers to be regulated and milk to be priced and pooled;

(b) Classification of milk and assignment of receipts to classes of utilization;

(c) Pricing of milk;

(d) Distribution of proceeds to producers; and

(e) Administrative provisions.

Findings, and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

Description of the market. The population of North Carolina and South Carolina as of April 1, 1980, was 5,882,000 and 3,122,000, respectively (U.S. Department of Commerce, Bureau of the Census, "Current Population Reports: Population Estimates and Projections." Series P–26, No. 1017, U.S. Government Printing Office, October 1988). The projected population, as of July 1, 1988, for North Carolina was 6,512,000 and 3,464,000 for South Carolina, for a total population of 9,976,000 persons.

The three metropolitan statistical areas (MSA's) of North Carolina are (1) Raleigh-Durham, (2) Greensboro, High Point, Winston-Salem, and (3) Charlotte. These three MSA's contain approximately 40 percent of the population of North Carolina and are linked by Interstate Highway 85.

The five MSA's of South Carolina are (1) Anderson, (2) Charleston, (3) Columbia, (4) Florence, and (5) Greenville-Spartanburg. These five MSA's plus Buford and Horry Counties contain approximately 65 percent of the population of South Carolina.

While milk production for North Carolina and South Carolina is virtually unchanged from 10 years ago, the population of North Carolina increased by 10 percent during the last 8 years and South Carolina increased by 11 percent during the same period. To supply the fluid milk needs of this increase in population, bulk and packaged milk have been imported into the two-State area to meet the increased demand.

Proponents of the order estimate that the milk of 1,600 dairy farmers will be pooled under the two-State order. They estimate that these dairy farmers produce about 203 million pounds of milk per month.

Milk production data from 1978 to date for North Carolina shows that total milk production currently is about the same as it was in 1978. Although the number of dairy herds declined from 1,349 in 1978 to 913 in December 1988, the average daily deliveries per farm increased by 55 percent.

Milk production in North Carolina is concentrated in the central part of the State. The average size herd had about 112 cows and 71 of the 100 North Carolina counties contain one or more herds. Dairy farms are located reasonably close to the main population

centers except in the northwest corner of the State where the Grade B dairy farmers are located. There are a few dairy farmers located in the extreme western counties whose milk is pooled in the Georgia Federal milk order.

In South Carolina, as of December 1988, there were 242 Grade A dairy farmers who produced about 456 million pounds of milk in 1988. Milk production in this State is concentrated in 6 of the 46 counties (Newberry, Saluda, Anderson, Orangeburg, Bamberg and Greenville). These six counties account for about half of the dairy farms and production in the State. Approximately one-third of the State's milk production is located along the coastal plain.

Milk production by South Carolina producers increased during the early 1980's and fell sharply during the mid-1980's due to droughts, the Federal milk diversion and dairy termination programs, and because of a decline in the economy. South Carolina has long been a milk deficit State that imports substantial quantities of milk.

There are 16 fluid milk processing plants located in North Carolina, which include the plant associated with the University of North Carolina at Raleigh. These plants, excluding the plant associated with the University, received approximately 136 million pounds of milk in January 1989.

There are 10 fluid milk plants located in South Carolina, which include the milk plants associated with Clemson University and the State prison and a plant at Greenville which is a fully regulated plant under the Georgia milk order. These plants, excluding the plants associated with Clemson University, the State prison and the Georgia milk order, received approximately 66 million pounds of milk in January 1989.

The record shows that receipts of milk during 1988 by fluid milk plants located in these two States ranged from a low of 188 million pounds in July to a high of 221 million pounds in March. Class I utilization ranged from a low of 80 percent in March to 86 percent in September.

In North Carolina, the Milk Commission continues to regulate many aspects of the dairy industry, such as the individual handler pools, base plans and the pricing of milk produced, processed and distributed within that State. At the time of the hearing, authority for marketwide pooling was scheduled to become effective August 1, 1989.

In South Carolina, the Dairy Commission was rendered powerless by a court decision to impose prices on producer milk and bulk or packaged milk moving into or out of South Carolina. The Department of Agriculture for the State of South Carolina continues to operate individual handler pools and administer base plans.

1. *Character of commerce.* The proposed Carolina marketing area includes the entire States of North Carolina and South Carolina.

There are 22 milk distributing plants located within the two States that are expected to be fully regulated plants under the proposed order. These 22 plants received approximately 202 million pounds of milk in January 1989. In addition, it is expected that a plant located at Lynchburg, Virginia, will be a fully regulated plant under this proposed order. A fluid milk plant located at Greenville, South Carolina, is expected to be fully regulated under the Georgia order.

There is a substantial amount of bulk milk and packaged milk moving between North Carolina and South Carolina. Milk from farms located in the two States is received by plants located in other states.

Milk plants located in South Carolina sell substantial amounts of packaged milk into Georgia. Fluid milk plants located in North Carolina sell packaged milk in Tennessee and Virginia. Fluid milk plants located in Virginia sell substantial quantities of milk into North Carolina.

The Agricultural Marketing Agreement Act of 1937, as amended, provides in section 608(c)(1) that milk orders issued by the Secretary shall regulate such agricultural commodity or product thereof, as is in the current of interstate commerce, or which directly burdens, obstructs, or affects interstate or foreign commerce in such commodity or product thereof. On the basis of the record evidence summarized in the preceding paragraphs, it is concluded that the handling of milk in the proposed marketing area is in the current of interstate commerce. Accordingly, the Department has the authority to establish a Federal milk order for this area.

2. *Need for an order.* A Federal milk marketing order for North Carolina and South Carolina was proposed by ten cooperative associations. Proponents of the order were Coble Dairy Cooperative, Inc. (Coble), Edisto Milk Producers Association (Edisto), Dairymen, Inc. (DI), Palmetto Milk Producers Association (Palmetto), Carolina-Virginia Milk Producers Association (Carolina-Virginia), Capital Area Milk Producers Association (Capital), Sumter Dairies, Inc., East Carolina Milk Producers, Dairy Farmers, Inc., and Southern Milk Sales (SMS).

At the hearing, an officer of DI testified on behalf of nine cooperative associations that included all of the above organizations except for East Carolina Milk Producers and Dairy Farmers, Inc. The ninth cooperative association was Maryland and Virginia Milk Producers Cooperative Association (Md-Va). Sumter Dairies, Inc., named above, at the time of the hearing was called Midlands Jersey Milk Producers Association (Midlands).

Proponents' witness stated that these nine cooperative associations represent about 173 million pounds of milk that will be pooled each month on the order. He said that the nine associations represent about 1,485 dairy farmers out of a total of 1,600 dairy farmers that are expected to be producers associated with the proposed order. These 1,485 producers, he said, represent about 85 percent of the milk volume and about 90 percent of the producers.

Witnesses for the following organizations testified in favor of the proposed order without any modifications:

1. North Carolina Farm Bureau.
2. South Carolina Farm Bureau.
3. Milkco, Inc. (proprietary handler).
4. Hunter Jersey Farms (proprietary handler).
5. Dairy Fresh, Inc. (proprietary handler).
6. Kroger Company (proprietary handler).

Witnesses for the following organizations testified in favor of an order with modifications that are discussed later in this decision:

1. Piedmont Milk Sales.
2. Carolina Jersey Milk Producers Association.
3. Land-O-Sun Dairies.
4. Edisto.

The proposed order was supported by the Commissioner of Agriculture for South Carolina and the Milk Commission for the State of Virginia. The proposed order was opposed by the North Carolina Milk Commission and the Carolina Guernsey Producers Association. A representative of Coburg Dairy, Charleston, South Carolina, indicated that the company disagreed in principle with Federal order regulation.

Testimony by the nine proponents of the order was presented by (1) an officer of DI, (2) an associate professor who is an extension economist at North Carolina University, and (3) a professor at Clemson University.

The DI officer testified about the operations of proponents. During the month of January 1989, Coble shipped 13.5 million pounds of milk (152 members) to their three fluid milk plants

that will be fully regulated under the proposed order. The cooperative operates fluid milk processing plants located at Lexington and Goldsboro, North Carolina, and Florence, South Carolina. It also supplies a small volume of milk to a plant at High Point, North Carolina.

Edisto in January 1989 shipped 12.5 million pounds of milk (68 members) to Coburg Dairy in Charleston, South Carolina, a plant that will be fully regulated by the proposed order.

DI in January delivered 60.7 million pounds of milk (689 members) to eight fluid milk plants expected to be regulated by the proposed order. Three of the eight plants are their own plants and are located at Greensboro and Wilkesboro, North Carolina, and Florence, South Carolina. DI delivers milk to five other plants, two of which are located in High Point, North Carolina, and the other three plants are at Lynchburg, Virginia; Charleston, South Carolina, and Fayetteville, North Carolina.

Palmetto in January 1989 delivered 20.2 million pounds of milk (91 members) to three fluid milk plants expected to be regulated by the proposed order. The plants are in Charlotte, North Carolina, and Spartanburg and Gafney, South Carolina.

Carolina-Virginia in January delivered 40.9 million pounds of milk (281 members) to three fluid milk plants expected to be regulated by the proposed order. The plants are in Winston-Salem, Asheville, and Charlotte, North Carolina.

Capital in January delivered 8 million pounds of milk (48 members) to their one plant at Raleigh, North Carolina.

Midlands in January delivered 2.4 million pounds of milk (20 members) to Sumter Dairies, Inc., at Sumter, South Carolina.

SMS in January delivered 6.5 million pounds of milk (81 members) to two fluid milk plants expected to be regulated by the proposed order. The plants are located at High Point and Asheville, North Carolina.

Maryland-Virginia in January 1989 delivered 7.75 million pounds of milk (55 to 60 members) to six fluid milk plants expected to be regulated by the proposed order. The plants are located at High Point, Winston-Salem, Charlotte, Asheville and New Bern, North Carolina and at Lynchburg, Virginia.

The two professors from the University of North Carolina and Clemson University, in addition to testifying about the interstate commerce of the milk industry and marketing conditions in the two States, outlined the need and reasons for a milk order that would cover both States. The major reasons advanced by these two witnesses for the order are briefly summarized as follows:

1. Population patterns in the two States have resulted in changed marketing conditions.

2. The dairy processing industry has changed from one of intrastate commerce to interstate commerce. Also, the industry has changed from a local industry to a regional type of industry and to a large extent to the use of chain store operations.

3. Equity among handlers has deteriorated. Fluid milk handlers located within the proposed marketing area that are regulated under the neighboring Federal orders have a significant difference in their cost of bulk milk (skim and butterfat pricing) than competing unregulated fluid milk plants. Unregulated fluid milk plants located in North Carolina have the opportunity to purchase milk from out-of-state, process that milk within their plant and dispose of that milk outside of the State and not be subject to any minimum pricing regulations.

4. The individual handler pools that exist in both States result in varying pay prices (difference in Class I utilization among plants and base plans) among producers. Pay prices among producers become more confusing because some cooperative associations are able to pool returns from several handler pools.

5. There is no uniform audit program throughout the area. South Carolina has a limited auditing program and North Carolina does not have the statutory authority to audit sales of packaged milk coming into North Carolina from fluid milk plants outside the State.

6. The North Carolina Milk Commission cannot effectively price milk sold into the State by out-of-state plants. Also, the Commission cannot effectively price milk sold out of the State by plants located within the State.

7. There is much disparity in producer pay prices as the result of the inability of the North Carolina Milk Commission to price all fluid milk sales and because of the operation of individual handler pools in both States. Producers delivering to the same plant do not always receive the same pay price nor do producers delivering to different plants in the same area receive the same price.

8. Individual handler pools create inequity among producers in the balancing of the necessary reserve and the seasonal surplus of the market. The lack of surplus manufacturing plants in the Carolinas or nearby results in an inequitable distribution among producers of the costs of balancing the fluid market. A Federal order with marketwide pooling would provide better equity in the cost of disposing of surplus milk.

9. At the present time, there is a lack of equity among processors selling into this two-State area because the source of supply determines the cost of bulk milk. A Federal order would assure each fluid milk plant that its competitor is paying at least the minimum Federal order prices.

The Vice Chairman of the North Carolina Milk Commission testified that in the Commission's view, there is no justification for a Federal order at the present time. He indicated that if it is decided that a Federal order should be issued for this area, the Commission should be able to continue to operate in certain areas of milk regulation. In his opinion, this would be in the best interest of the consuming public, producers and processors.

The spokesman for the Carolina Guernsey Producers Association testified very briefly that their organization was opposed to a Federal order. However, if a Federal order is to be issued, he contended that the order should provide for component pricing. The subject of component pricing is discussed in a later section of this decision.

The proponent cooperative associations overwhelmingly agree that the two State programs are not providing marketing stability. They have stated that only a Federal order for this area that provides for marketwide pooling, minimum pricing and complete accounting can restore market stability to this area.

The main reason for instability of milk marketing in North Carolina and South Carolina is that both States lack the ability to price both bulk and packaged milk moving into or out of their respective State.

In 1985, the Circuit Court of South Carolina declared that the South Carolina Milk Commission's pricing authority was unconstitutional under the Commerce Clause of the United States Constitution. The Commission, as a result of this decision, decided that it was impractical to regulate in-State milk because milk becomes indistinguishable when commingled with milk flowing interstate. The Commission ceased to exist and milk bases are now being calculated by the South Carolina Department of Agriculture. That Department continues to perform monthly audits of fluid milk plants located in South Carolina and disposing of milk in South Carolina only.

In North Carolina, a Milk Commission regulates many aspects of the milk industry. In 1988, however, as the result of a consent decree, the Milk Commission's authority to establish Class I prices for sales made by North Carolina handlers outside North Carolina was terminated.

A federation of cooperative associations (Carolinas Federation) that represents about 90 percent of the dairy farmers in both States sets or announces Class I and Class II prices in South Carolina. Prices in North Carolina, although set by the Milk Commission, are significantly influenced by the prices set by the Carolinas Federation. The announced Class I price in North Carolina is based on the Minnesota-Wisconsin price series (used in all Federal milk orders for setting Class I prices) plus six dollars. The Milk Commission will adjust prices downward whenever North Carolina handlers have to meet competition by outside handlers selling into North Carolina who are able to purchase milk below this formula price.

For sales made by North Carolina handlers into Virginia, the North Carolina Milk Commission requires that dairy farmers be paid the Class I price announced by the Virginia Milk Commission. For sales made by North Carolina handlers into South Carolina or Federal order marketing areas, dairy farmers supplying these plants are paid the prevailing prices paid by the milk plants located outside the State and selling in those markets.

North Carolina fluid milk plants selling into Virginia are required by the Virginia Milk Commission to buy enough Virginia base-holder milk to cover these sales. The North Carolina handler can buy from a Virginia cooperative association that has base-holder milk or the North Carolina handler can acquire his own dairy farmers who hold Virginia milk base.

Handlers located in Virginia who are subject to the Virginia Dairy Commission regulations are accountable for fluid milk sales into North Carolina at the Virginia Class II price. These sales can affect the Class I price in North Carolina because the North Carolina Dairy Commission cannot regulate the price of milk entering North Carolina. The record shows that this volume is substantial.

South Carolina has long been a milk deficit State. The record shows that while exports of South Carolina producer milk increased from 66 million pounds in 1983 to 152 million pounds in 1988, or 130 percent, imports of bulk milk increased from 56 million pounds to 527 million pounds for the same period, or 841 percent. Packaged fluid milk sales by South Carolina plants outside the State increased from 235 million pounds in 1983 to 319 million pounds in 1988, or 36 percent. Packaged milk received at South Garolina plants increased from 6 million pounds in 1983 to 26 million pounds in 1988, or 333 percent. Packaged fluid milk sales into South Carolina (other than to South Carolina plants) increased from 112 million pounds in 1983 to 127 million pounds in 1988, or 13 percent.

For North Carolina, the record does not contain these same data that were made available for South Carolina. However, the record does show that milk production by North Carolina dairy farmers increased from 1.40 billion pounds in 1987 to 1.42 billion pounds in 1988, or 1.4 percent. Bulk imports into North Carolina decreased from 6.7 billion pounds in 1987 to 1.8 billion pounds in 1988, or 27 percent of the 1987 volume. Total fluid milk sales by North Carolina processors increased from 1.25 billion pounds in 1987 to 1.30 billion pounds in 1988, or 4 percent. Fluid milk sales outside the State by North Carolina processors increased from 242.6 million pounds in 1987 to 258.5 million pounds in 1988, or 6.6 percent. Fluid milk sales into North Carolina from outside processors decreased from 227.9 million pounds in 1987 to 209.8 million pounds in 1988, or 8 percent.

It is clear from these data that South Carolina relies substantially on imported bulk and packaged milk. North Carolina, on the other hand, is relatively self-sufficient. The substantial amount of milk moving into South Carolina which cannot be regulated by the State contributes significantly to disorderly marketing in that State.

Historically, Class I prices in South Carolina have been higher than Class I prices in North Carolina. The record shows for the period of October 1987 through March 1988, the Carolinas Federation's announced Class I price for South Carolina was slightly higher than for North Carolina. In April 1988, the two prices were the same and for the period of May 1988 through March 1989, the North Carolina announced Class I price was higher than for South Carolina. As a consequence of this price differential during the period of May 1988 through March 1989, a substantial amount of packaged milk was shipped from South Carolina processors into North Carolina.

Historically, the Georgia Federal order Class I price has been 70 to 80 cents lower than the announced South Carolina Class I price. The record shows that in January 1988, this price difference was $1.58 ($16.00 less $14.42). For the months of February through April 1988, this price difference was $.90 for all three months, which is closer to the historical relationship between the two States. A price difference of $1.58 versus $.90 can result in some shifting of packaged milk sales between these markets, contributing to disorderly marketing in South Carolina.

At the hearing, the two witnesses associated with the two universities testified about the disparity in pay prices received by dairy farmers delivering milk to the same fluid milk plant or to different plants located in the same general area. They testified (survey conducted for both States) that for January 1989, the pay prices received by six cooperative associations doing business in South Carolina ranged from a high of $15.36 to a low of $13.73, a difference of $1.63. In North Carolina, for January 1989, pay prices ranged from a high of $15.38 to a low of $13.99, a difference of $1.39.

Although the record shows that there has been considerable shifting of producers between handlers in North Carolina, this situation is even more prevalent in South Carolina. The disparity in pay prices caused by the individual handler pools and the individual base plans has contributed to disorderly marketing in North Carolina and South Carolina.

Another factor contributing to disorderly marketing in this two-State area is the butterfat differential used in paying producers. In both States, the butterfat differential is based on a factor of .1 of the Chicago 92-score butter price. In surrounding Federal order markets, the butterfat differential is based on a factor of .115 of the Chicago 92-score butter price. The witness testifying about marketing conditions in South Carolina estimated that the difference in the computation of the butterfat differential cost South Carolina dairy farmers about $400,000 per year. The witness testifying about marketing conditions in North Carolina estimated that the use of a factor of .115 would add 4 to 6 cents per hundredweight to producer pay prices.

From the foregoing, it is clear that the two State programs cannot assure dairy farmers associated with this marketing area of payments for their milk in accordance with its use and at minimum prices that are uniformly applicable throughout the market. These State programs, if allowed to continue, could lead to even a further dependence on outside milk supplies to meet the needs of the area. A Federal milk order providing for classified pricing at reasonable levels and marketwide

pooling for distributing the returns uniformly among all producers will help provide the needed market stability. A Federal order will provide an environment of stable and orderly marketing throughout this area through the adoption of a classified pricing plan based on audited utilization of all Grade A milk purchased by handlers from producers and an equitable division among all producers of the proceeds obtained from the sale of their milk in the respective classes, including the lower-priced uses of reserve milk supplies not needed for fluid uses.

A Federal order will assure handlers that their competitors will pay not less than the minimum prices set by the order for milk and such prices will apply whether the milk comes from farms located in North Carolina or South Carolina, or other States, and without regard to whether the milk is disposed of inside or outside the marketing area.

This record shows that the dairy industry in the two-State area, particularly in South Carolina, does not have available detailed information regarding milk procurement and milk uses. A Federal order would provide such information on a continuing basis and would contribute to the development and maintenance of stable and orderly marketing conditions. The lack of such data, by itself, does not necessarily demonstrate the need for an order. Complete and accurate market information would, however, provide a substantial benefit to producers, cooperatives and handlers alike.

It is concluded that a Federal order for North Carolina and South Carolina as herein proposed will stabilize and improve milk marketing conditions in the area. The order is in the public interest in that it will establish orderly marketing conditions for producers and handlers relative to milk distributed in the proposed marketing area and will assure a continuing and adequate supply of high quality milk for consumers. Furthermore, the order will effectuate the declared policy of the Act by providing for:

1. The establishment of uniform minimum prices to handlers for milk received from producers according to a classified plan based upon the utilization made of the milk;

2. Uniform returns to producers supplying the market based upon an equal sharing among all such producers of the returns from the order prices for both the higher-valued Class I milk and the lower returns from the sale of reserve milk that cannot be marketed for fluid use;

3. An impartial audit of handlers' records to verify the payment of required prices;

4. A system for verifying the accuracy of the weight and butterfat content of milk purchased;

5. Marketwide information on receipts, sales, prices, and other related data concerning milk marketing; and

6. A regular and dependable procedure that affords all interested parties the opportunity to participate, through public hearings, in the determination of changes that may be required in the marketing plan in order to insure an orderly market.

3(a). *Handlers to be regulated and milk to be priced and pooled.* It is necessary to designate clearly what milk and which persons would be subject to the various provisions of the order. This is accomplished by providing specific definitions to describe the marketing area, route disposition, the types of plants, the various categories of regulated persons (handlers), and the persons (producers) whose milk will be subject to the uniform prices.

Marketing area—The Carolina marketing area, as proposed, should include all the counties within North Carolina and South Carolina. The defined marketing area should include all piers, docks, and wharves connected therewith and all craft moored at such facilities. The marketing area should include, as well, all territory occupied by municipal, state or federal government reservations, installations, institutions, or other similar establishments if any part is within the boundaries specified above unless such territory is within the marketing area of any other Federal order. The marketing area should not include the Great Smoky Mountains National Park, which lies in North Carolina and in Tennessee. Such area is currently included in the Tennessee Valley marketing area. This is because some of the park is located in the Tennessee counties that are a part of the Tennessee Valley marketing area, and the Tennessee Valley order includes all of a Federal government establishment if any part is within the marketing area.

Proponents' witness testified that in analyzing the area to be included in the proposed marketing area and the proposed four pricing zones, consideration was given to (1) the location of population within the area, (2) the location of plants selling in the area, (3) the location of the milk supply for plants that are expected to be fully regulated under the proposed order, (4) the area of regulation covered by nearby and adjacent Federal milk marketing orders, and (5) the pricing zones established by such orders. Proponents' spokesman indicated that a Federal order should be applicable to all counties in both States and that no useful purpose would be served by excluding any of the territory of the two States or by attaching some part of the proposed marketing area to some adjacent Federal order.

The witness for the proponents stated that the inclusion of all counties within the States of North Carolina and South Carolina in the proposed marketing area will not result in the regulation of any plant that has not been subject to State regulation. He said that the proposed marketing area would not cause a fluid milk plant to shift regulation from another Federal order to the proposed Carolina Federal order. Furthermore, he said, including all the counties within the two States will simplify both the reporting requirements by handlers and the administration of the order.

The proposed marketing area covering North Carolina and South Carolina is bordered on the east by the Atlantic Ocean and on the west and southwest by the Federally regulated areas of the Tennessee Valley and Georgia milk orders, respectively. The northern border of the marketing area abuts the southern boundary of the State of Virginia. Milk marketing in the Virginia area immediately to the north of the marketing area is under the regulation of the Virginia Milk Commission. The major distribution areas of the plants physically located within the Carolina marketing area are within the proposed marketing area or in the marketing areas of the two adjoining Federal orders.

Only one of the 23 fluid milk plants that are expected to be fully regulated by the proposed order is located outside the Carolina marketing area. That plant is located at Lynchburg, Virginia, and is operated by the Kroger Company. A representative of the company testified in favor of Federal regulation for the two-State area and the provisions of the proposed order.

Of the remaining 22 fluid milk plants that would be fully regulated under the proposed order, 15 plants are located in North Carolina and 7 plants are located in South Carolina. In addition to the 7 South Carolina plants, there is one additional fluid milk plant at Greenville, South Carolina. That plant is currently regulated under the Georgia order. Testimony at the hearing indicated that the plant's sales in the Georgia marketing area are greater than its sales in the proposed Carolina marketing area. Consequently, the plant is expected to continue as a pool plant under the Georgia order.

With the exception of the plant at Lynchburg, Virginia, other Virginia fluid milk plants, according to the Deputy Administrator for the Virginia Milk Commission, have less than 15 percent of their sales in the Carolina marketing area. As discussed in a further section, a plant with less than 15 percent of its Class I sales in the proposed marketing area would not be a pool plant.

On the basis of this record, it is concluded that the inclusion in the proposed marketing area of all the territory in the States of North Carolina and South Carolina is appropriate. Such marketing area, in conjunction with the proposed pool plant standards, would not result in the full regulation of any fluid milk plants located outside the Carolina marketing area other than a plant at Lynchburg, Virginia. As previously noted, the operator of such plant testified in favor of regulation for the two-State area.

The four pricing zones, indicated earlier, will be discussed in a subsequent section of this decision.

Route disposition. A definition for "route disposition" is a convenience for specifying the various kinds of fluid milk sales outlets that will be considered in determining whether a distributing plant would be regulated under the order. As proposed by the order proponents, and adopted herein, route disposition would mean any delivery of a fluid milk product classified as Class I milk to a retail or wholesale outlet (except to a plant), either directly or through any distribution facility or vendor, and including any disposition from a plant store or through a vending machine. It would not include the delivery of fluid milk products to a handler's distribution points. The distribution from such points would be considered a route disposition from the milk plant where the fluid milk products were processed and packaged.

Plant. The order should contain a "plant" definition for purposes of clarity, ease of order interpretation and reference. As proponents suggested and as adopted herein, "plant" means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received, processed, or packaged.

Separate facilities used only as a distribution point for storing packaged fluid milk products in transit would not be a plant. Similarly, separate facilities at which milk is only reloaded from one tank truck to another would not be a plant as defined herein.

Distributing plant. The order should define a distributing plant as a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk and at which fluid milk products are processed or packaged and from which there is route disposition in the marketing area during the month. The definition for a distributing plant is provided to describe the activities conducted at such a plant and to distinguish this type of plant operation from others. It also is helpful in referring to this particular type of plant throughout the order.

In North Carolina, the Grade A milk sanitation regulations are enforced by the North Carolina Department of Human Resources, Division of Health Services. The sanitation rules and regulations for North Carolina adopt by reference the Pasteurized Milk Ordinance recommended by the U.S. Public Health Service, Food and Drug Administration. The North Carolina Department of Agriculture, Pure Food and Drug Division, is responsible for checking the accuracy of milk plant butterfat tests of producer milk.

In South Carolina, health and sanitary regulations for producers and plants are enforced by the South Carolina Department of Health and Environmental Control. South Carolina has reciprocal agreements with other states with respect to producer and plant inspections. Butterfat testing regulations and some bulk tank calibration checks are provided by the South Carolina Department of Agriculture Laboratory Division. The Division also certifies weighers and testers employed by the industry.

Supply plant. A "supply plant" also should be defined under the order. As adopted herein, "supply plant" means a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk, and from which fluid milk products are transferred during the month to a pool distributing plant.

Although proponents' witness testified that DI does not anticipate pooling any milk on the proposed order through a supply plant or a balancing plant, the order should contain such provisions. The record shows that at this time, all milk received at fluid milk plants that are expected to be pool distributing plants are receiving only direct-shipped milk. Nevertheless, the order should contain such a provision because of the possibility that some time in the future, it may be in the best interest of some cooperative association or proprietary handler, as well as the market as a whole, to ship milk to this market through a distant supply plant.

Pool plant. Essential to the operation of a marketwide pool is the establishment of minimum performance requirements to distinguish between those plants engaged in serving the fluid needs of the regulated market and those that do not serve the market in a way or to a degree that warrants their sharing (by being included in the pool) in the Class I utilization of the market. Because of differences in marketing practices and functions between distributing plants, supply plants and cooperative "balancing" plants, separate performance standards for each type of operation are provided in the attached order.

The following discussion sets forth the pooling standards that should apply to the various types of pool plants. To facilitate the discussion, it is noted that the performance standards for pooling a distributing plant and a supply plant provide that the plant's required association with the market should be measured in terms of the proportion of its milk receipts that are disposed of in the market. It is intended that such receipts would include any producer milk that is diverted from the plant to nonpool plants. Although diverted milk is not physically received at the plant from which diverted, it is, nevertheless, an integral part of the plant's supply of milk and acquires producer milk status by virtue of its association with such plant. Therefore, diverted milk should be included in the total receipts of milk at the pool distributing plant or the pool supply plant from which the milk was diverted for the purpose of determining whether the plant qualifies as a pool plant.

Milk that a cooperative bulk tank handler diverts from a pool plant to a nonpool plant also should be included in such plant's receipts for purposes of determining the plant's pool status. Requiring all diverted milk to be included as a receipt at pool plants from which diverted in determining their pool status will insure the integrity of the order by requiring all producer milk to be associated with pool plants.

Along that same line, milk diverted to a supply plant from an other order plant should not be included as a receipt of milk at the supply plant for the purpose of determining whether the plant qualifies as a pool plant. Since such milk would be considered a part of the total supply of milk at the plant from which diverted, it should not be included in the supply plant's receipts. This will permit milk to be diverted to a supply plant with manufacturing facilities for processing without affecting the pool status of the supply plant. A pool supply plant may represent the nearest available outlet for milk surplus to the fluid needs of another Federal order area.

No similar accommodation needs to be made when milk is diverted to a distributing plant. Since these plants are essentially fluid bottling plants, there really is no reason to divert milk to these plants for any reason other than for bottling purposes. Hence, all milk physically received (including milk diverted to such plant) at the plant should be considered in the plant's total receipts for the purpose of determining whether the distributing plant qualifies as a pool plant.

Provision also is made for a cooperative association to pool a balancing plant that is located in the marketing area or in the State of Virginia. The pooling standard for such a plant would be measured in terms of the cooperative's overall supply function for the market, i.e., the proportion of the cooperative's member producer milk that is delivered to pool distributing plants.

Proponents' witness testified that the Class I utilization of a pool distributing plant should not be less than 60 percent for the months of August through November and January and February. He said that for the remaining months, the Class I utilization should not be less than 40 percent.

As proposed and adopted, a pool distributing plant would be required each month to have route disposition in the marketing area of not less than 15 percent of its total route disposition to be fully regulated. This route disposition requirement would not include filled milk.

At the hearing, a witness for Land-O-Sun Dairies, Inc. (LOS), a handler that is expected to have two plants fully regulated by the Carolina order, testified that the in-area route disposition requirement should be lower than 15 percent. He proposed that the in-area route disposition be not less than 15 percent of the total route disposition (except filled milk) or an average of not less than 5,000 pounds per day (except filled milk).

The witness testified that LOS was concerned because there are fluid milk plants selling substantial volumes of milk in the proposed marketing area that would not be fully regulated plants under the proposed 15 percent in-area distribution requirement. In some cases, he said, this volume could be over 3 million pounds per month. The witness alleged that partially regulated distributing plants have a competitive advantage over fully regulated plants in competing for Class I sales. He said that partially regulated plants serving government installations in the marketing area can use surplus milk to supply these installations.

An in-area monthly route disposition requirement for a pool distributing plant averaging not less than 10,000 pounds per day (except filled milk) was supported at the hearing by a witness for Dairy Fresh, Inc. He said that Dairy Fresh, Inc., was concerned about a fluid milk plant located in Virginia that was selling packaged milk in North Carolina.

A witness for the Milk Commission of the State of Virginia testified that the 5,000 pounds per day modification proposed by LOS is not appropriate. He said that any limit less than 15 percent is too restrictive. The witness stated that a plant located in Virginia was a fully regulated plant under the Middle Atlantic marketing area and that order has a similar 15 percant provision. He said that he expects four fluid milk plants that are located in Virginia, including the one fully regulated under the Middle Atlantic order, to become fully regulated under the Carolina order if the proposed 5,000 pounds per day limitation is adopted.

None of the three nearby Federal milk orders provides for a specific pound limitation on the amount of milk that a distributing plant may sell on routes in the markating area as one of the conditions for meeting the pooling provisions of such order. The Middle Atlantic order has a less restrictive in-area percentage limitation than the 15 percent total Class I disposition on routes proposed for the Carolina order. Although the Middle Atlantic order's percentage limitation is 15 percent, it is based upon a larger volume of milk than the plant's Class I disposition. It is based upon the plant's Grade A receipts physically received at the plant and diverted from the plant. The Georgia order, too, has a 15-percent limitation on in-area sales but it is based upon the Plant's total Class I disposition, which would include packaged milk distribution on routes as well as bulk Class I sales to other plants. The Tennessee Valley order establishes an in-area sales limitation of 10 percent of the plant's Grade A receipts physically received at the plant as well as milk diverted from the plant. Thus, the pooling requirements on in-area sales under the Tennessee Valley order and the Carolina order are equivalent for a distributing plant that utilizes two-thirds of its total Grade A receipts as Class I milk. The 10-percent requirement applied to a plant's Grade A receipts are more restrictive than the 15-percent requirement applied to a plant's Class I disposition only when a plant's Class I utilization exceeds two-thirds of the plant's total receipts.

The 15 percent in-area route disposition requirements proposed for the Carolina order are similar to the requirements in surrounding Federal orders and are appropriate for the Carolina order. As previously noted, the in-area disposition requirements proposed for the Carolina order are somewhat more restrictive than the current requirements for the Middle Atlantic and Georgia orders. However, the 15 percent in-area requirement when applied to distributing plants that have route disposition in excess of two-thirds of their total receipts is less restrictive than the current requirements of the Tennessee Valley order. Furthermore, there was no opposition to the adoption of the proposed 15 percent requirement.

Several parties proposed, however, that in addition to the 15 percent requirement, an average daily limitation on in-area route disposition of either 5,000 or 10,000 pounds per day should apply. The proposed daily limitations, however, would regulate under the Carolina order four Virginia milk plants. One of the four plants is currently regulated by the Middle Atlantic milk order. Such plant's sales into the Carolinas market are unlikely to be a disruptive factor since the plant is already under Federal regulation. The volume of in-area sales and the total route sales of the other three plants were not presented at the hearing. Accordingly, there is no basis for concluding that in-area sales requirements other than a percentage limitation are needed. Furthermore, these three plants are regulated by the Virginia Milk Commission. It is concluded, therefore, that a sufficient basis does not exist for adopting a poundage limitation on in-area sales at this time.

The witness for proponents testified that a supply plant should qualify for pool status by transferring a certain percentage of its total receipts from dairy farmers to pool distributing plants. He said that for the months of August through November and January and February, 60 percent of the total quantity of milk that is physically received during the month at such plant or diverted therefrom and delivered to pool distributing plants is an appropriate standard based on Class I utilization for this marketing area. During all other months, he said, the requiremant for pooling a supply plant should be 40 percent.

The proposed pooling standards for a supply plant contained in the notice of hearing provided that the operator of such plant may include milk diverted from such plant to a pool distributing plant as qualifying shipments in meeting up to one-half of the required shipments.

This provision is contained in the Tennessee Valley milk order, which is the basis for most of the regulatory provisions proposed for the Carolina order. Permitting up to one-half of the milk diverted from a supply plant to a pool distributing plant to be used as qualifying shipments would give the supply plant operator more flexibility in moving milk from the farm to a pool distributing plant. The provision will also allow for the more efficient movement of milk in those situations where there are producers associated with the supply plant who are located nearer to the distributing plant than to the supply plant. The proposed provisions appear to be appropriate for the Carolina order and should be adopted.

Proponents' spokesman testified that a cooperative association's plant should also be able to qualify for pooling as a "balancing plant." He testified that such a plant should be able to qualify by requesting pool plant status provided that 60 percent or more of the cooperative's member producer milk pooled on the proposed order is delivered to pool distributing plants.

Although proponents' witness testified that he did not expect any supply plants or balancing plants to be associated with this market, the order should contain such provisions. A supply plant would be expected to be located some distance from the consumption centers and perform the traditional functions of assembling milk and supplying distributing plants with supplemental milk supplies on heavy bottling days. Because of its distance from the market center, this type of plant would find it more efficient to receive milk from the farm at the plant and then transfer it into larger over-the-road tank trucks for transshipment to distributing plants. Therefore, a "supply plant" has been defined on the basis of transfers to pool distributing plants.

The Carolina marketing area, like most Federal marketing areas, does not have any supply plants. The use of farm bulk tanks, refrigerated trucks and a greatly improved highway system have eliminated the need for the services that supply plants provide.

Because South Carolina does not produce enough milk to furnish the needs of its handlers and because North Carolina does not produce much more milk than is needed by its handlers, it is necessary to import milk from sources beyond the two States. Therefore, specific pooling standards for supply plants need to be included in the order in the event such a plant in the future should supply milk for this market to such an extent that it should participate in the marketwide pool.

The record of this proceeding shows that Class I utilization for 1987 and 1988 was about 80 percent or more for all months of these two years. For 1987, the month having the lowest Class I utilization was May (80.6 percent) and the month having the highest Class I utilization was October (88.5 percent). For 1988, the month having the lowest Class I utilization was March (79.7 percent) and the month having the highest Class I uilization was September (85.9 percent).

In view of the high level of Class I utilization in this market, the proposed Class I utilization percentages for a distributing plant and the proposed shipping requirements for a supply plant (60 percent during the months of August through November and January and February and 40 percent in all other months) are appropriate. The neighboring Tennessee Valley marketing area contains the same standards.

A witness for LOS testified that supply plants should have the right to automatic pooling for the months of March through June if the supply plant was a pool plant during each of the preceding months of July through February. This, he said, would be conditioned on the plant continuing to meet the requiremants of a duly constituted health authority. The plant operator, he said, by written application could request that the plant be designated as a nonpool plant.

The LOS witness stated that with the proposed base and excess pay period of March through June, there would be no need for a supply plant to meet a shipping requirement. He said that required shipments from supply plants to distributing plants located in the central markets during the spring months would not be economical or efficient.

Neither at the hearing nor in post-hearing briefs was there any other support for automatic pooling of supply plants.

Automatic pool plant status for supply plants for the months of seasonally higher milk production was not proposed by the proponents. The fluid requirements of distributing plants in this market are such that supply plants, if relied upon for milk for the future, should be required each month to transfer certain percentages of their receipts to distributing plants to participate in the order's marketwide pool. Supply plants likely would need to ship milk to distributing plants in this market even during the months when production tends to be heavier, because during the days of peak bottling demand, all of the milk supply available for this market will be needed to furnish the needs of distributing plants. Therefore, a supply plant's requirements for pool status should apply on a year-round basis.

Although this market, at the present time, receives only direct shipped milk, there could come a time when a balancing plant may be needed to make supplemental shipments. The amount of these shipments, however, may not be in sufficient amounts to qualify the plant as a supply plant. The plant, however, should qualify for pooling as long as the cooperative has demonstrated that it is providing the market as a whole with substantial quantities of milk.

With respect to a balancing plant, a cooperative should be able to move the milk in the least costly manner whether direct shipped or by plant transfer. In the interest of efficiency, the cooperative's deliveries from the farm and/or transfers from the plant should count as qualifying shipments in determining whether a balancing plant meets the minimum delivery requirement. This alternative should provide the cooperative flexibility in moving its milk supplies to customers.

Milk should not be permitted to be associated with the market merely for manufacturing purposes because this reduces returns to producers and discourages the production of an adequate supply of milk by those producers regularly supplying the fluid market. Therefore, it is necessary that the pooling standards for a balancing plant be structured to assure that milk pooled through a balancing plant is a part of the regular market supply. A requirement that the plant be located in the marketing area or in the State of Virginia, along with a requirement that 60 percent of the cooperative's total member producer milk be delivered to pool distributing plants, should assure that milk manufactured at the balancing plant represents reserve milk supplies for this market.

Proponents' witness was asked why the cooperative balancing plant provision for the Carolina order, unlike most other provisions of the proposed order, was not patterned after the Tennessee Valley order. The Tennessee Valley order requires that a cooperative balancing plant must be located in the marketing area.

The witness indicated that such a provision would preclude the pooling of a cooperative balancing plant located in the State of Virginia. He stated that while he was unaware at this time of any cooperative balancing plant or

supply plant that might qualify as a pool plant, he did not want to rule out the possibility that a Virginia plant might be needed to process reserve milk supplies for the Carolina market in the future. Proponents' concern in that regard has been overcome by providing that a cooperative balancing plant may be located in the marketing area or the State of Virginia.

The Carolina Federal Order Committee, representing nine cooperative associations who are proponents of a Federal order for the Carolinas, excepted to the requirement that a cooperative balancing plant be located in the marketing area or the State of Virginia to obtain pool status. They indicate they had supported at the hearing and continue to support no restriction on the location of a cooperative balancing plant.

As noted in the recommended decision, there needs to be some assurance that milk manufactured at the balancing plant represents reserve milk supplies for this market. If a need exists for milk from an area more distant than the marketing area or the State of Virginia, a cooperative has the option of qualifying a supply plant as a pool plant by shipments from such plant.

Arguments by the Committee that no restriction should be placed on the location of a cooperative's balancing plant are without merit. Accordingly, their exception in that regard is hereby denied.

As proposed and adopted, the order should provide for a temporary upward or downward adjustment in the total Class I utilization percentage that a pool distributing plant must meet each month. Also, the order should provide for a temporary upward or downward adjustment of the shipping percentages for supply plants. Such adjustments should be made only if the Director of the Dairy Division determines that additional supplies are needed at distributing plants or to prevent uneconomic shipments of milk to such plants. The adjustments should be limited to 10 percentage points. Under such an arrangement, the Director would investigate the need for the revision of the performance standards for distributing plants and/or supply plants.

There is always a possibility that temporary or emergency situations affecting the market's supply-demand conditions could develop for a short time that would warrant a timely adjustment in these performance standards. Absent the discretionary authority to respond, these changes could be accomplished only through an amendment proceeding or by a suspension action. Amendment proceedings normally take considerable time, and suspension actions often are limited in their effects. Inclusion of provisions to temporarily adjust these performance standards by up to 10 percentage points will provide more flexibility to respond to short-run or emergency marketing situations on a timely basis.

The performance standards adopted herein for the various types of pool plants should be adequate to insure that the milk pooled under the Carolina order is associated with the market's fluid use. They are sufficient to prevent the development of Grade A milk supplies and the association of such supplies with the order solely for the purpose of obtaining milk for other than Class I use. The provisions are adequate considering the proposed market's Class I needs and the historical utilization of producer milk in such area.

Certain plants should be excluded from "pool plant" status even though they meet the pooling standards of the order. A distributing plant that has route disposition in this marketing area as well as in another marketing area should be regulated in the market in which such plant has the greatest route sales.

A supply plant that meets the shipping requirements of this order and another Federal order but which has greater shipments to distributing plants regulated under the other order should be pooled under the other order. Also, a supply plant pooled under another Federal order on the basis of its automatic pool plant status would not be a pool plant under the Carolina order even if such plant meets the shipping requirement under this order.

The proposed and adopted order language in this respect complements the neighboring Tennessee Valley and Georgia orders.

In addition, certain types of plant operations that are exempt from the pooling provisions of the order should be specifically excluded from the order's pool plant definition. In that regard, the term "pool plant" should not apply to a producer-handler's plant or a governmental agency plant.

Nonpool plant. The new order should include a definition of "nonpool plant." Under the order, a nonpool plant would mean any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The "nonpool plant" definition sets forth five specific categories of plants that cannot be pool plants under the order. With the exception of the producer-handler definition, they are adopted essentially as proposed by the order proponents.

A definition of "nonpool plant" is provided in the new order to facilitate the formulation of the various order provisions as they apply to such a plant. The various types of nonpool plants are described further hereinafter.

An "other order plant" would be a plant that is fully regulated under another Federal order. As such, it cannot be a pool plant under this order.

A plant operated by a "producer-handler", as defined in this or any other Federal order, would be considered a nonpool plant. Due to the nature of the operation, as discussed later, such a plant is specifically exempt from pool status.

A "partially regulated distributing plant" also would be considered a nonpool plant. A partially regulated distributing plant would be a plant that does not qualify as a pool distributing plant, an other order plant, a producer-handler plant, or a governmental agency plant. Generally, such a plant would be a distributing plant that has route disposition in the defined marketing area, but not to an extent that would qualify it for pool status under the order.

An "unregulated supply plant" means a supply plant that does not qualify as a pool supply plant, an other order plant, a producer-handler plant, or a governmental agency plant. In essence, it is a plant that transfers milk to pool distributing plants, but not to an extent that would qualify it for pool status under the order (less than the specified percentage of its receipts from dairy farmers is transferred to pool distributing plants).

A distributing plant operated by a governmental agency (Federal, State, or local) would also be included among the nonpool plants specified in the order.

A governmental agency which operates its own dairy farm and processing plant and distributes such milk at a plant store, on a college campus, or to the inmates of a governmental institution should not be fully regulated under the order. Such operations are normally not a competitive factor in the overall market and for this reason should not be pooled.

Three governmental agencies whose dairy operations would qualify as nonpool plants under the order are North Carolina State University at Raleigh, Clemson University, and the South Carolina prison operation, which has 2 dairy herds and a processing plant at Wateree.

The proposed "exempt plant" definition is not adopted in this decision. This provision would have exempted a producer-handler plant that has monthly

route disposition of 150,000 pounds or less.

Handler. The impact of regulation under an order is primarily on handlers. A handler definition is necessary to identify those persons from whom the market administrator must receive reports, or who have financial responsibility for payment for milk in accordance with its classified use value. As herein provided, the following persons are defined as handlers under the order:

(1) The operator of one or more pool plants;

(2) A cooperative association with respect to producer milk that is picked up at the farm and delivered to a nonpool plant as diverted milk for the cooperative's account;

(3) A cooperative association with respect to milk of a producer that is picked up at the farm and delivered to a pool plant of another handler for the cooperative's account;

(4) The operator of a partially regulated distributing plant;

(5) A producer-handler;

(6) The operator of an other order plant from which milk is disposed of in the area; and

(7) The operator of an unregulated supply plant.

All of the categories of handlers listed above, with the exception of the operator of an unregulated supply plant, were proposed by the order proponents and are common to most milk orders. Each person who may have a reporting requirement or may incur a financial obligation under the order should be designated a handler. This will assure that all information necessary to determine a person's status under the order can be readily determined by the market administrator. For this reason, the operator of an unregulated supply plant and the other persons listed above should be defined as handlers under the new order.

A pool plant operator who receives milk from producers should be the responsible handler for such milk. As the responsible handler, such person should report, in the detail prescribed by the market administrator, the quantities of milk received from each producer and each other source. Such operator also should be responsible for reporting certain other information deemed necessary by the market administrator in order to determine the utilization of producer milk. Such handlers should be responsible for making payments to producers, cooperative associations and the producer-settlement fund in accordance with the terms of the order.

A cooperative association should be a handler under the order for farm bulk tank milk moved by the cooperative to a pool plant or diverted to a nonpool plant. In the case of such movements to a pool plant, a cooperative should be the handler for milk received for its account from the farm of a producer that is delivered to a pool plant of another handler in a tank truck owned and operated by, or under the control of, such cooperative. However, should there be a mutual agreement between the cooperative and the pool plant operator whereby such operator agrees to be the handler for the milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the cooperative need not be the handler for such milk.

Requiring a cooperative to be the handler on milk picked up for its account at the farm of a producer and delivered to a pool plant provides a practicable basis for the complete accounting of such milk. It also recognizes the current handling arrangements used by the cooperatives operating in the market in allocating their milk among distributing plants.

In the event a plant operator is receiving milk from a cooperative association, the cooperative is the only party that has the opportunity to measure and sample the milk of individual member producers that is received at the plant. Therefore, in the absence of any agreement by the plant operator to be the handler on such milk, the cooperative must be the responsible handler for the milk as it leaves the farm.

The pool plant operator's obligation on milk purchased from a cooperative as a "bulk tank handler" is the same as for producer milk received directly from the farm of an individual producer. The plant operator must account to the pool for the milk according to the classification assigned to the milk based on the plant's utilization. The pool plant operator, in turn, settles with the cooperative on the basis of the uniform price for the milk. Under this arrangement, the pool plant operator is obligated to the producer-settlement fund, the administrative fund and the cooperative on the quantity of milk the cooperative delivers to such handler's pool plant directly from the farms of producers. The cooperative, in turn, is obligated to the producer-settlement fund and administrative fund on only that portion of milk picked up for its account that exceeds the quantity delivered to pool plants.

This accounting and payment procedure for bulk tank milk received from a cooperative will simplify the accounting for such milk by the pool plant operator. It will facilitate the administration of the order with respect to such items as financial responsibility, enforcement, and subsequent audit adjustments that may arise. Since the actual use of milk reflects the receiving pool plant's operation, it is reasonable that the responsibility for the accounting and payment of such milk be placed directly on such pool plant operator.

The order provides that a cooperative could be a handler on the milk of a producer which it diverts for its account from a pool plant to a nonpool plant. This handling arrangement will facilitate the movement of milk not needed for fluid use to nonpool plants for manufacturing. It also will assist the principal cooperatives in balancing supplies among the several distributing plants serving the market.

Under this handling arrangement, the diverting cooperative would be obligated to the producer-settlement and administrative expense funds on the diverted milk. Conversely, the operator of the nonpool plant that received the milk from the diverting cooperative would not incur an obligation on such milk under the order.

This order should afford all cooperatives in the market flexibility in the arrangements under which they sell milk to pool plants or dispose of reserve supplies. If it so chooses, a cooperative should be able to pick up the milk of nonmember producers along with the milk of members for delivery to a pool plant or diversion to a nonpool plant. This procedure will enable the cooperative to act as the marketing agent for a nonmember producer who has contracted with the cooperative to market his or her milk. Nothing in the order would require a cooperative to pick up the milk of nonmember producers. It would provide, however, that when a cooperative does pick up milk of nonmember producers on trucks under its control, it must assume varying degrees of responsibility with regard to such milk, depending on the handling arrangements made.

The Capper-Volstead Act provides the criteria by which cooperative associations are determined to be qualified cooperatives under the Agricultural Marketing Agreement Act. With the adopted handler definition, the new order would be consistent with that provision of the Capper-Volstead Act which recognizes that cooperatives "may deal in the products of nonmembers" and which limits such dealings to amounts not greater in value than those "handled by it for members."

Producer-handler. The order should exempt "producer-handlers" from the

pricing and pooling provisions of the order. The producer-handler definition of the Tennessee Valley milk order, with some modification in the quantity of fluid milk products that may be acquired from other sources, is typical of the producer-handler definition in Federal milk orders in the southeastern United States and should be adopted herein.

Under proponents' producer-handler proposal, operations disposing of more than 150,000 pounds per month of fluid milk products that had both production and processing facilities would be limited to disposing of fluid milk products directly to consumers through home delivery retail routes or through a retail store located on the same property as the milk processing plant in order to qualify as a producer-handler. Any other type of distribution would result in a disqualification of producer-handler status, which proponents claimed would recognize those points in the marketing channel where a pricing advantage over regulated handlers contributes to disorderly marketing. In addition, the proposal would prohibit a producer-handler from having a financial interest in any other handler or dairy farm operation. It also would require that any producer-handler who loses such status meet all the conditions for such status for a period of one month before reacquiring producer-handler status. The purpose of these conditions is to preclude a producer-handler from changing its regulatory status to fit sales conditions or change its organizational structure to gain benefits at the expense of others.

The proposed definition would limit a producer-handler's purchase of fluid milk products from pool plants to the lesser of five percent of Class I disposition or 5,000 pounds per month. In addition, the proposals would require that producer-handlers pay the administrative assessment that is applicable to handlers.

It was the position of proponents that since there are no producer-handlers located within the proposed marketing area, now is an appropriate time to incorporate the proposed producer-handler provision as part of the proposed order. As a part of the nonpool plant provision, proponents proposed an exempt plant definition that would exempt from the pricing and pooling provisions those producer-handlers with monthly route disposition of 150,000 pounds or less.

A significant proportion of proponent's testimony was centered on the legislative history of the Act as it relates to the authority to regulate handlers who sell fluid milk products derived solely from own-farm production. Proponents contended that it was the intent of Congress to fully regulate such type of handlers who are large enough to have an impact in the marketplace and that only relatively small operations were intended to be exempt from regulation. Proponents testified that the purpose of the Act, which they contend is to stabilize marketing conditions for producers, is primarily accomplished by establishing classified pricing and by the pooling of returns from the sale of milk among all producers. They further testified that, to the extent that unpriced milk is free to enter the regulatory scheme, the objective of the Act—to promote orderly marketing—is frustrated. Furthermore, they contend that a failure to regulate large producer-handlers results in nonuniform prices to handlers, which they claim also is contrary to the requirements of the Act. Thus, they conclude that inequities exist between fully regulated handlers and exempt producer-handlers, which they contend caused the very same market disruption that is intended to be rectified by Federal regulation.

Proponents maintain that the proposals are consistent with the intent of Congress in that relatively small operations would continue to be exempt from full regulation. Also, producer-handlers, however large they might be, would also be exempt from full regulation if their sales of fluid milk products were not in direct competition with those of regulated handlers. Proponents testified that disruptive competition would not result to the extent that sales of large producer-handlers are restricted to home delivery and to sales from a plant store on the same premises as the processing plant. Proponents contend, however, that to the extent that sales are made in the same commercial channels used by regulated handlers, the same regulatory provisions should apply to producer-handlers as to handlers. Otherwise, proponents contend, producer-handlers who have a significant pricing advantage can disrupt the marketing of milk to the detriment of regulated handlers and to the producers who supply the milk requirements of the market.

Proponents testified that it is necessary, as a result of changes in marketing conditions, to alleviate the potential for market disorder that may result because of unfair competition between regulated handlers and exempt producer-handlers. Proponents contend that with the trend toward fewer and larger producers and handlers, there is an increasing potential for the vertical integration of production and processing operations of sufficient size to be disruptive factors in Federal order markets.

Experience under Federal orders has demonstrated that effective regulation can be achieved without the full regulation of those persons who produce, process, and distribute essentially only the milk produced on their own farms and who buy no milk from other dairy farmers or plants other than pool plants and other order plants. Such operations are basically self-sufficient in that they rely primarily on their own farm production and assume the burden of maintaining the necessary reserve supply of milk associated with their fluid milk operations in disposing of any daily or seasonal surplus they may produce.

As adopted herein, a producer-handler is any person who operates a dairy farm and a processing plant and who receives no fluid milk products from sources other than such person's own farm production, pool plants, and other order plants. Any such receipts from pool plants and other order plants during the month may not exceed the lesser of five percent of Class I disposition or 5,000 pounds per month. A producer-handler may not dispose of any other source milk in the form of a fluid milk product except through the addition of nonfat milk solids to fortify fluid milk products received from such person's own farm, pool plants or other order plants.

To qualify as a producer-handler, such person must provide proof satisfactory to the market administrator that the care and management of the dairy farm and other resources necessary for such person's own farm production of milk and the management and operation of the processing plant are the personal enterprise and risk of such person.

As long as the producer-handler retains exempt status, the only obligation imposed on such person by the order is to keep records, to file reports with the market administrator and to permit their verification. The purpose of such reports is to permit the market administrator to verify that the operation continues to be one of a bona fide producer-handler. Such reports are necessary regardless of the size of the producer-handler operation.

Under the order, a producer-handler must provide milk for such person's processing operation essentially only from such person's own-farm production. The operations of processors with own-farm production who rely on other plants for substantial supplemental supplies either in bulk or packaged form are not significantly

different from the operations conducted by pool handlers. In addition, such individuals do not assume the risk or cost of providing a full supply for their own needs. If such operations are not pooled, the pool does not receive the benefit of their Class I sales but acts as a supply balance by carrying their necessary reserve milk supplies.

Notwithstanding the above conclusion, it is appropriate that producer-handlers be permitted some tolerance for purchasing fluid milk products from other plants. A limitation of the lesser of five percent of Class I disposition or 5,000 pounds per month on a producer-handler's purchases from pool plants and other order plants will insure against unintentional involvement in regulation of producer-handlers as a group while at the same time deterring larger handlers with own-farm production from evading the pooling of such production by seeking producer-handler status.

Except for the limited privilege of using receipts from other order plants as described above, the provisions of the order preclude a producer-handler from using other source milk for Class I, except nonfat dry milk used solely to increase the nonfat milk solids content of the fluid milk products the producer-handler processes. Such provisions are necessary since a producer-handler to gain that status for all practical purposes must carry on a self-contained operation. If such an individual were permitted to reconstitute or otherwise use other source milk as a source of supplemental supplies, there would be no basis for distinguishing the operations of such individuals from the operations conducted by pool handlers. Furthermore, since a producer-handler is not regulated, and therefore does not incur a pool obligation, it is not appropriate that such person have access to supplemental supplies other than from fully regulated sources. In the absence of such a requirement, a producer-handler could find it advantageous to reconstitute nonfat dry milk, for example, and sell it in fluid form to consumers. With nonfat dry milk carrying only a surplus milk value, competing regulated handlers would be at a disadvantage on their Class I sales.

As indicated, a producer-handler's exemption from the pooling and pricing provisions is predicated upon the basic self-sufficiency of the total operation. Accordingly, no other person should be permitted to share the risk involved with the operation of a producer-handler's farm or such person's plant. All resources necessary for such person's own farm production of milk must be such person's personal risk. Similarly, all risks associated with the operation of the processing plant must be that of the producer-handler.

Although producer-handlers have not been fully regulated as a general practice, the Act provides the authority to regulate handlers of milk to carry out the purposes of the Act. With respect to producer-handlers, guidelines from the legislative history indicate that there is authority to regulate such operations if they are so large as to disrupt the market for producers. However, on the basis of the overall history of the treatment of producer-handlers, a size consideration, in and of itself, is not particularly relevant to the issue. Even large operations in relation to the markets they serve have continued to be exempt from full regulation. Consequently, any decision to fully regulate a producer-handler type operation must be supported by substantial evidence of the existence of disorderly marketing that is a direct result of producer-handler activity.

In the Carolina market, there are no producer-handlers. Obviously, the disorderly marketing that exists in the Carolinas is not a result of producer-handler activity. Consequently, no basis exists for fully regulating a producer-handler operation on the basis of this record.

The Carolina Federal Order Committee excepted to the Department's decision not to adopt their proposed producer-handler definition. The exception reiterates arguments they presented at the hearing and contains no basis for changing the Department's findings set forth in the recommended decision. Accordingly, the exception is denied.

Producer—The term "producer" defines those dairy farmers who constitute the regular source of supply for the market. The producer definition adopted herein follows the one proposed and supported by the order proponents.

Producer status under the order should be provided for any dairy farmer who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk is received at a pool plant directly from the producer's farm or is picked up at the farm by a cooperative as a bulk tank handler for delivery to a pool plant. Producer status also should be accorded to a dairy farmer who has established association with the market and whose milk is diverted from a pool plant to a nonpool plant by a cooperative association or a pool plant operator, either for fluid use or for surplus disposal.

To establish a producer's association with the market and to insure the marketability of such producer's milk, it is reasonable to require that a dairy farmer's milk be received at a pool plant each month to qualify such dairy farmer's milk for diversion to a nonpool plant. The "touch base" requirement is discussed more fully in the findings dealing with the definition of "producer milk."

The order would provide an exemption for producer-handler operations and for plants operated by a governmental agency. Since these operations are exempt from the order's pricing and pooling provisions, milk which is excess to the needs of such operators should not be treated as producer milk when it is moved directly from the farms of such operators to a pool plant. Accordingly, the producer definition adopted herein would specifically exclude producer-handlers and governmental agency plants. Any such milk delivered to a pool plant from such operations would be other source milk.

In addition, provision must be made to preclude the possibility of a dairy farmer being a producer under two orders with respect to the same milk. In this regard, the producer definition should exclude a dairy farmer with respect to milk which is received at a pool plant under this order by diversion from a pool plant under another order if the dairy farmer is a producer under the other order with respect to such milk and the milk is allocated to Class II or Class III use under this order. Also, the definition should exclude a dairy farmer with respect to milk which is diverted to a pool plant under another order from a pool plant under this order if any portion of such person's milk is assigned to Class I milk under the other order.

Producer milk. The "producer milk" definition is intended to define the milk that would be priced and pooled under the order. The definition adopted herein, except for the "touch base" provision, follows the one proposed and supported by the proponents.

"Producer milk" would include milk of a producer that is (1) received at a pool plant directly from such producer by the operator of the plant; (2) received by a cooperative association acting as a bulk tank handler; (3) diverted by a cooperative association or a pool plant operator from a pool plant to a nonpool plant that is not a producer-handler plant; or (4) diverted from a pool plant for the account of the handler operating such plant to another pool plant.

The order should provide for "diversions" to nonpool plants by pool

plant operators and cooperative associations. When milk is not needed at a pool plant, it usually is diverted to a nonpool plant where it is used to produce manufactured milk products. Diversion limitations are necessary, however, to insure that the pool distributing plants in the market are adequately supplied first. A portion of an individual producer's milk would have to be received at a pool plant each month (touch base provision) to qualify the producer's milk for diversion to nonpool plants during the month. Also, pool plant operators and cooperative associations would be limited in the total quantity of milk that they can divert during the months of seasonally short milk production.

As proposed and adopted, pool plant operators and cooperative associations should be permitted to divert during the months of July through November and January and February an amount equal to one-fourth of the milk that is physically received at or diverted from pool plants as producer milk of such handler during the month.

The order would require that each producer's milk be received at a pool plant each month. This "touch base" provision would require that each individual producer deliver to a pool plant at least 2 days' production in each of the months of March through June and 6 days' production in each of the other months of July through February.

Proponents' witness testified that each individual producer should be required to deliver to a pool plant at least 4 days' milk production in each of the months of March through June and 10 day's production in each of the other months of July through February. This requirement, he said, is necessary so as to have some direct association between the producer each month and a pool plant. The witness said that without a "touch-base" requirement milk of a producer could be pooled without ever having to come to a pool plant.

The spokesman for the proponent testified that 10 days' production is a reasonable minimum number of days for associating an individual producer's milk with the marketwide pool during the short production months. He said that the demand for milk at distributing plants is at its highest on Wednesday, Thursday and Friday of each week (12 days per month). Without a delivery requirement for individual producers, he said, a pool plant operator could associate enough milk with the Carolina pool so that the plant's utilization would always be at the minimum permitted under the order. He said that marketing conditions in the proposed area support 10 days of delivery during the months of short production. In his view, the small amount of inconvenience and cost that might be associated with bringing milk of producers who are normally associated with the proposed Carolina order on the number of days required would be minimal as compared to the cost (reduction in the blend price) of having milk associated with the order pool to the extent that the supply plants or distributing plants could pool milk to the maximum allowed and still meet the performance requirements.

Proponents' witness testified that the proposed diversion limits are appropriate for this market because Class I utilization is expected to exceed 80 percent during the months of July through November and January and February. He said that such a high utilization requires that the milk pooled on the order during this period be available for fluid use. Proponents' witness said that their proposed diversion limits will, however, permit the efficient disposition of milk that is not required at pool plants for fluid use.

The limits on total diversions of producer milk to nonpool plants by a handler should be established at a rate that will accommodate the market's need to efficiently dispose of milk not needed for fluid use. At the same time, it is necessary to assure that milk supplies will be available for fluid use.

Based on the record, it is concluded that handlers' diversions of milk to nonpool plants should not exceed an amount equal to one-fourth of the milk physically received at pool plants during the months of July through November and January and February.

A pool plant operator, other than a cooperative association, should be allowed to divert any milk that is not under the control of a cooperative that is diverting producer milk during the month. The total quantity of milk that such plant operator may divert during any month should be limited to one-fourth of the producer milk physically received at such plant during the month. Also, a cooperative association should be allowed to divert milk for its account. In this case, the percentage limit should be one-fourth of the cooperative association's producer milk that is delivered to and physically received at pool plants during the month.

The record indicates that the diversion allowance proposed and adopted is expected to accommodate the efficient movement of milk supplies in excess of the market's fluid needs by handlers. Having set that allowance at an appropriate level, the individual producer "touch-base" standard should be set at a minimal level in order to allow handlers the maximum flexibility to receive milk from producers in the least costly manner.

Handlers should be able to move producer supplies that are under their control in the most efficient manner. Producers supplying a particular pool plant can be widely dispersed. Because of the various farm locations, handlers may receive milk from several farm routes, some of which likely would be nearer to the plant than others. Therefore, it is more economical to receive the milk of those producers located closest to a handler's plant on a regular basis and to receive the milk of more distant producers only when their milk is needed. On the other hand, a handler wanting to dispose of reserve milk would want to divert to nonpool manufacturing plants the milk of the distant producers more often than the milk of those producers who are located closest to the pool plant, assuming that the manufacturing plant is located further from the metropolitan centers than distributing pool plants.

It is reasonable, however, that the order include a minimal "touch base" provision that would require each producer's milk to be received at a pool plant each month. As indicated previously, proponents proposed that each individual producer deliver his milk to a pool plant at least 4 days' production in each of the months of March through June and 10 days' production in each of the other months of July through February.

The witness for LOS proposed that each individual producer deliver to a pool plant at least 2 days' production in each of the months of March through June and 6 days' production in each of the other months of July through February. He said that the proposed marketing area is limited in the number of manufacturing plants that can handle surplus milk or balance the supply for fluid needs. The witness said that the additional milk that is needed for fluid use in this market from time to time is produced in Tennessee, Kentucky and Virginia. This, he said, should be considered in determining the appropriate "touch-base". In his view, proponents' 10 days and 4 days proposal, coupled with a limited diversion provision, would result in the moving of distant producers to the central market and at the same time moving other producers located closer to pool distributing plants back out to manufacturing plants just to comply with the "touch base" requirement.

It is concluded that a 6 days and 2 days "touch base" is more appropriate for this market. The neighboring Tennessee Valley order contains a 6

days and 2 days "touch base" provision. Such order also provides that the total quantity of milk that may be diverted by a cooperative association or proprietary handler may not exceed one-fourth of the milk that was received at or diverted from pool plants as producer milk of such handler during months of seasonally short production. Since the Carolina order would likewise apply a percentage limitation on the quantity of milk that may be diverted to nonpool plants as producer milk during the months when production is short relative to demand for milk for fluid use, there appears to be no reason to require other than a minimal producer "touch-base" requirement during such period. Therefore, a touch-base requirement of 6 days' production (three deliveries for producers whose milk is picked up every other day) each month of July through February is reasonable. Such a standard is adequate to establish that a producer is eligible to have milk diverted to a nonpool plant during the months when production is short relative to the demand for milk for fluid use.

Only 2 days' production of each producer would have to be received at a pool plant during the months of March through June. This is the period when the market's fluid needs generally would require a lesser proportion of the available milk supply. Thus, the 2 days' production requirement should provide the flexibility needed during the months of March through June to dispose of reserve milk supplies that are not needed for fluid use.

The Carolina Federal Order Committee excepted to the Department's decision to use 6-day and 2-day "touch base" requirements instead of the 10-day and 4-day requirements proposed by the Committee. They argue that the "touch base" requirements of the Tennessee Valley order are not appropriate for the Carolina market because this market will have a higher utilization than the Tennessee Valley market.

As previously noted, the requirement that additional days of production be delivered to pool plants to qualify the milk of dairy farmers for delivery to nonpool plants as producer milk could result in uneconomic movements of milk. If there is a need to limit the amount of milk that may be associated with the market by diversions to nonpool plants, it should be accomplished by reducing the percentage of milk that may be diverted as producer milk to nonpool plants. Accordingly, the Committee's exception to the "touch base" requirements is hereby denied.

The order should provide a procedure to be followed for determining pool status of the milk if a pool plant operator or cooperative association diverts milk in excess of the percentage allowance specified in the order. As adopted herein, the excess quantity of milk would not qualify as producer milk and would not be priced under the order. In such cases, the diverting handler would be required to designate the dairy farmer deliveries that should not be considered producer milk. Absent such designation, no milk diverted by the handler would be producer milk. The order proponents proposed this method of identifying over-diverted milk.

The order should also provide a method to determine which producers' milk should not be qualified as producer milk when a cooperative's diversions from a pool plant to nonpool plants would cause such plant to lose its pool status. In such cases, the cooperative should be responsible for identifying which dairy farmers' milk would not be producer milk. Because the cooperative is the accountable handler to the pool for the producers' milk, such handler is in the best position to identify those producer deliveries that would not be producer milk for purposes of assuring continued pool status for the plant involved.

If the cooperative fails to designate the dairy farmers' deliveries that are to be excluded as producer milk, no milk diverted by the cooperative to nonpool plants would be considered producer milk. This procedure is consistent with the method used to specify which dairy farmer deliveries should not be considered producer milk in excess of the percentage allowance specified in the order.

As proposed by proponents of the order, all diverted milk should be priced at the location of the plant to which the milk was diverted. Pricing diverted milk at the location of the plant where such milk is physically received removes the possibility of subsidizing distant producers when their milk is diverted to distant manufacturing plants. This would occur if such producers received a blend price f.o.b. the city plant (as if the milk had actually moved to the city) when in fact no transportation cost to the city had been incurred because the milk was diverted to a manufacturing plant located near the producer's farm.

Since the proposed order would allow limited quantities of milk that are diverted to count as qualifying shipments for the purposes of pooling a supply plant, the order also should provide for diversions between pool plants. This will provide the technical means under the order for milk to be delivered by supply plant operators directly from producers' farms to pool distributing plants and still count as shipments from the supply plant. Also, it will allow the operator of any pool plant to divert milk supplies to another pool plant and retain the producer milk status and payroll responsibility for such milk. Without this provision, a plant operator who wants to retain regular producers on the plant's payroll for the entire month would have to physically receive the milk of such producers into the plant (so that it will be considered "producer milk"), then pump it back into the truck and deliver it to the other pool plant. Such milk would then be considered a transfer from one plant to another with the transferor-handler accounting to the pool for the milk and paying those producers as well.

This practice is obviously uneconomic, resulting in unnecessary and costly movements of milk. In addition, the unnecessary pumping of milk is damaging to its quality. Permitting diversions of milk between pool plants will promote the efficient handling of milk.

In the case of diversions between pool plants, the question arises as to whether such diversions should be considered as a receipt at the divertor plant, the divertee plant, or both for the purpose of determining whether such plants have met the requirements for pooling under the order. As adopted herein, such diversions would be treated in the same manner as transfers between pool plants.

The order provides that milk which is transferred from one distributing plant to another shall be included in the receipts of both the transferor plant and the transferee plant. Diversions between pool distributing plants should be treated in the same way.

Milk that is transferred from a pool supply plant to a pool distributing plant is included in the receipts of both the supply plant and the distributing plant. Accordingly, diversions from a pool supply plant to a pool distributing plant should be considered in the receipts of both plants.

Fluid milk products that are transferred from a pool distributing plant to a pool supply plant are included in the receipts of the distributing plant but are excluded from the receipts of the supply plant. Diversions from a pool distributing plant to a pool supply plant should also be treated this way.

Other source milk. An other source milk definition should be adopted for the new Carolina order. In addition to milk received from producers, a regulated

pool plant may receive milk or milk products from other sources. An "other source milk" definition will serve to specifically identify the various categories of such receipts.

The order proponent suggested that the "other source milk" definition that was adopted when a uniform milk classification plan was provided for 39 Federal order markets on August 1, 1974, be included in the new order. There was no opposition to this proposal, which is adopted.

As provided herein, "other source milk" would be all skim milk and butterfat in a handler's receipts of fluid milk products or bulk fluid cream products from any source other than producers, cooperative association handlers, or pool plants. It also would include a handler's receipts of fluid cream products in packaged form from other plants. In addition, any milk products (other than fluid milk products, fluid cream products and products produced at the plant in the same month) from any source which are reprocessed, converted into, or combined with another product in a handler's plant during the month would be considered a receipt of "other source milk." Receipts of milk products (other than fluid milk products or fluid cream products) for which the handler fails to establish a disposition also would be included under the "other source milk" definition.

Although fluid cream products would be Class II products and would not be included in the order's fluid milk product definition, bulk fluid cream products should be treated in the same manner as fluid milk products for purposes of applying the other source milk definition. This procedure will facilitate the application of the other provisions of the order.

Receipts of fluid cream products, eggnog or yogurt (or any filled product resembling such products) in packaged form from other plants would be considered other source milk. These products are Class II under the classification plan provided for this market. Although no handler obligation would apply under the order provisions adopted herein with respect to such receipts, it is desirable for accounting purposes that receipts of packaged Class II products be defined as other source milk. This accounting technique will preclude the recordkeeping difficulties that might otherwise be experienced in accounting separately for inventories and sales of Class II products processed in the handler's plant versus those received at the plant in packaged form from other plants. As provided herein, such receipts of other source milk would be allocated directly to the handler's Class II utilization, rather than being allocated to the extent possible to the handler's lowest class of utilization as is provided in some cases for other types of other source milk.

The order should provide that manufactured products from any source that are reprocessed, converted into, or combined with another product in the plant be considered as other source milk. For accounting purposes, such manufactured products would include dry curd cottage cheese received at a pool plant to which cream is added before distribution to consumers. When used to produce cottage cheese or lowfat cottage cheese, the receipts of dry curd would be allocated under the provisions adopted herein directly to the handler's Class II utilization. No handler obligation would apply under the order to such receipts.

The order also should provide that products manufactured in a pool plant during the month and then reprocessed, converted into or combined with another product in the same plant during the same month not be defined as other source milk. For example, assume that a handler makes condensed skim milk from producer milk and then uses the condensed product in making ice cream. It is intended under this situation that the producer milk be considered as having been used to produce ice cream. The condensing operation is merely one of the steps performed by the handler in processing ice cream from raw milk.

Any disappearance of manufactured milk products for which the handler fails to establish a disposition would be considered other source milk. It is reasonable that each handler be required to account for all milk and milk products received or processed at the handler's regulated plant. Otherwise, a handler with inadequate records may have an opportunity to gain a competitive advantage over competitors who properly account for all of their receipts of milk and milk products. Specifying any unexplained disappearance of manufactured milk products as other source milk will contribute to a uniform application of the regulatory plan to all handlers.

Filled milk. Filled milk should be defined as any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

This definition and the treatment afforded such products under the order are consistent with the provisions and treatment of filled milk adopted in the Assistant Secretary's decision for all Federal orders issued October 13, 1969 (34 FR 16881). Official notice was taken of the 1969 decision at the hearing held April 17–20 and April 24–25, 1989, for this market. The record evidence indicates that the findings and conclusions of the 1969 decision are equally applicable under current marketing conditions in the proposed marketing area.

Cooperative association. A definition of "cooperative association" should be adopted as suggested by the order proponents.

As provided herein, a cooperative association means any cooperative marketing association of producers which the Secretary determines, after application by the cooperative association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of, or marketing milk or milk products for, its members.

Defining such an organization of producers will facilitate the formulation of the various other order provisions as they apply to such an association of producers.

(b) *Classification of Milk*

The statutory authority for Federal milk orders specifies that an order shall classify milk in accordance with the form in which or the purpose for which the milk is used. As proposed by proponents, the order should provide for three classes of utilization.

The products included in Class I milk and sold in the proposed marketing area for fluid consumption are required to be produced in compliance with the inspection requirements of a duly constituted regulatory agency. This is in contrast to the absence of such requirements for manufactured dairy products such as butter and hard cheese. Because of the extra cost of getting high-quality milk produced and delivered to the market in the condition and quantities required, it is necessary to establish a separate class for such milk to which a price above the manufactured milk price may be applied. The higher price for Class I milk must be at a level which, together with the prices applicable to other classes, will yield a "uniform" price that will

encourage production of milk to meet the fluid requirements of the market.

Class I milk should include all skim milk and butterfat disposed of in the form of milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids. Skim milk and butterfat disposed of in any such product that is flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted likewise should be classified as Class I milk. Such classification should apply whether the products are disposed of in fluid or frozen form.

Skim milk disposed of in any product described above that is modified by the addition of nonfat milk solids should be Class I milk only to the extent of the weight of the skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

Class I milk should not include skim milk or butterfat disposed of in the form of evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, or whey.

Each product designated herein as a Class I product would be considered a "fluid milk product" as defined in the order. In addition to these fluid milk products, Class I milk would include any skim milk and butterfat not specifically accounted for in Class II or Class III, other than shrinkage permitted a Class III classification.

As provided, skim milk or butterfat disposed of as filled milk in fluid form shall be classified as Class I milk. This classification is identical to the treatment of filled milk in all Federal order markets. The basis for the uniform treatment of filled milk under this and all other Federal orders is set forth in the earlier findings concerning the definition of filled milk.

Class III milk should include products which are made from surplus Grade A milk and which compete in a national market with similar products made from manufacturing grade milk. These products include cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese), butter, any milk product in dry form (such as nonfat dry milk), any concentrated milk product in bulk, fluid form that is used to produce a Class III product, and evaporated or condensed milk (plain or sweetened) and evaporated or condensed skim milk (plain or sweetened) in consumer-type packages. Class III milk also should include any product not specified in Class I or Class II.

An intermediate class, Class II, should apply to certain products which can command a higher value than Class III products, but which must be competitively priced below Class I in order to compete with non-dairy substitute products or manufactured dairy products that can be used in making Class II products. Class II milk should include skim milk and butterfat disposed of in the form of a "fluid cream product," eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles one of these products. As defined in the order, "fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

Class II milk should also include bulk fluid milk products disposed of to any commercial food processing establishment at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages. In addition, it should include milk used to produce cottage cheese, lowfat cottage cheese, dry curd cottage cheese, milkshake and ice milk mixes containing 20 percent or more total solids, frozen desserts, frozen dessert mixes, and certain other products as specified in the order.

The classification scheme adopted herein was proposed by the order proponents and is identical to the uniform classification plan contained in many of the other Federal order markets. The plan was based on exhaustive hearings held on this issue in 1971 for 39 markets. The final decision on the uniform classification plan was issued February 19, 1974 (39 FR 9012). Official notice was taken of this decision at the hearing held April 17–20 and April 24–25, 1989, for the Carolina market. It contains a detailed discussion of the classification issue. Official notice also was taken of the Assistant Secretary's decision issued July 17, 1975 (40 FR 30119), which modified certain provisions originally adopted in the 39-market decision.

Proponents testified that this classification system (as modified in 1975) would be fully appropriate for the proposed order. Adoption of the uniform classification plan in this new order will coordinate these essential provisions with the same provisions under most other orders.

The record evidence indicates that the findings and conclusions of the above-mentioned decisions are equally applicable under current marketing conditions in the proposed marketing area.

Classification of shrinkage. The Carolina order should contain provisions for classifying skim milk and butterfat in shrinkage. The shrinkage provisions adopted herein are similar to the shrinkage provisions now provided in most orders.

Total plant shrinkage should be prorated between (1) those kinds of receipts on which the Class III shrinkage limitations apply, and (2) other receipts, principally other source milk in the form of fluid milk products requested for Class II or Class III use. To the extent that the quantity of shrinkage prorated to the first category exceeds the established Class III limit, the excess should be classified in Class I.

The shrinkage provisions provided herein recognize that shrinkage normally varies with the type of handling involved. More loss is usually experienced in plant processing than in merely receiving milk for delivery to another handler. Thus, with respect to milk picked up at producers' farms and delivered to a plant, a Class III shrinkage allowance of 0.5 percent for such milk is provided.

A Class III shrinkage allowance of 1.5 percent to cover milk lost in processing is provided for the pool plant operator. This provides a total of 2 percent Class III shrinkage allowance for such milk from producers in the receiving and processing operations.

The total shrinkage allowance applicable to a pool plant operator depends upon whether the plant operator purchases the milk at farm weights and tests or at plant weights and tests. The provisions allow the plant operator up to 2 percent shrinkage in Class III if the milk is purchased on the basis of weights determined at the farm and butterfat tests determined from farm bulk tank samples. In this case, there is no shrinkage allowance for a cooperative association handler who may have delivered the milk from the farm to the pool plant.

As provided herein, when bulk milk is transferred to another plant, the shrinkage allowance to the transferor handler would be reduced at the rate of 1.5 percent of the quantity transferred. This is similar to provisions now applicable under most orders.

In the case of milk diverted from a pool plant to a nonpool plant, a shrinkage allowance in Class III of 0.5 percent would be provided the diverting handler if the operator of the plant to which the milk is diverted purchases such milk on the basis of weights and tests determined at the plant. If the milk is purchased at farm weights and tests, no shrinkage allowance would apply for the diverting handler. This same procedure would apply to cooperative bulk tank deliveries to pool plants when similar handling is involved.

This division of the 2 percent shrinkage allowance, both in the case of deliveries from cooperative bulk tank handlers to plants and for transfers between plants, has been found practical and has been well accepted in Federal order markets where it now applies. Shrinkage should be accounted for on an individual plant basis in the case of a handler operating more than one pool plant under the order. This procedure will promote plant efficiency in the Carolina market.

Classification of milk transferred or diverted to other plants. Some fluid milk products or fluid cream products may be disposed of by regulated handlers to other plants. It is necessary, therefore, to provide specific rules so that the classification of such movements may be determined under this order.

Under the adopted classification plan, fluid cream products would be classified as Class II products. If such products are transferred to another plant in packaged form, the skim milk and butterfat contained therein should be classified as Class II milk since these items are moved in final form. The classification of fluid cream products when disposed of in bulk form, however, is determinable only by following the movement of the bulk product to its subsequent use. Thus, it is necessary that fluid cream products that are transferred in bulk from a pool plant to another plant be classified in a manner similar to that used in classifying transfers of bulk fluid milk products.

Some skim milk or butterfat may be transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant. Such transfers should be classified as Class I milk unless both handlers request the same classification in another class in their monthly reports to the market administrator and sufficient Class II or Class III utilization is available at the transferee plant after the allocation of its receipts of other source milk. If the shipping plant received other source milk in the form of nonfat dry milk, for example, during the month, the skim milk and butterfat so transferred should be classified so as to allocate the least possible Class I utilization to the other source milk. If the shipping handler received other source milk from an unregulated supply plant or an other order plant, the transferred quantities, up to the total of such receipts, should not be Class I to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee plant.

Transfers from a cooperative bulk tank handler to the pool plant of another handler should be assigned classification pro rata with producer milk received at the plant.

The provisions governing transfers between pool plants described herein will contribute to obtaining the best possible utilization of producer milk. Such provisions will tend to insure that producer milk used in Class I will not be classified in a lower class when interplant shipments involve a pool plant with receipts of other source milk. Unless such safeguards are provided, a high-utilization plant could be used as a conduit for assigning milk obtained from nonpool sources for manufacturing purposes to a higher utilization (at the expense of producer milk) than it would receive by direct delivery to the plant at which it is actually utilized.

Skim milk or butterfat may be transferred or diverted from a pool plant or an other order plant in the form of a fluid milk product or transferred from a pool plant to an other order plant in the form of a bulk fluid cream product. The classification of such transfers or diversions should apply only to the skim milk and butterfat in excess of any receipts at the pool plant from the other order plant.

The order should provide for the diversion of milk to other order plants for Class II or Class III use. Such provisions will foster the efficient handling of surplus milk in the market by permitting the disposal of such milk directly from farms to manufacturing plants in other markets, rather than having such intermarket movements limited to the more expensive method of transferring milk from one plant to another. With the safeguards adopted herein, returns to producers in the market to which the milk is diverted will not be affected by the processing of this surplus milk in their market since the diverted milk will continue to be pooled in the Carolina market.

Fluid milk products transferred or diverted to other order plants and bulk fluid cream products transferred to such plants will be classified in accordance with the classes to which such milk is allocated under the other order. If information concerning the classification of transfers and diversions is not available to the market administrator in time to compute handler pool obligations, such transfers should be classified in Class I, subject to adjustments when the information is available. In addition, the order should provide that if the other order provides for a different number of classes than the Carolina order, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified in Class I and skim milk and butterfat allocated to other classes shall be classified as Class III milk. The order also provides that if a fluid milk product is transferred to an other order plant and such product is not defined as a fluid milk product under the other order, classification of such transfer shall be in accordance with the classification provisions of this order.

The order should prescribe a method for classifying the skim milk and butterfat in transfers from a pool plant to a producer-handler or in transfers or diversions from a pool plant to a governmental agency plant. If such skim milk and butterfat are in the form of a fluid milk product, such transfers should be classified as Class I milk. As described elsewhere in this decision, such a classification is necessary to assure that producers are not burdened with maintaining reserve supplies associated with the Class I sales of such operations.

Skim milk and butterfat in the form of bulk fluid cream products transferred from a pool plant to a producer-handler or a governmental agency plant should be assigned to the extent possible to the receiving plant's Class III use, and then to Class II use. If the producer-handler or governmental agency plant does not have enough utilization in these classes to cover such transfers, any remaining transfers should be classified as Class I milk.

The order also must prescribe a procedure for classifying transfers or diversions to a nonpool plant that is not an other order plant, a producer-handler plant, or a governmental agency plant. Bulk fluid milk products transferred or diverted and bulk fluid cream products transferred should be classified as Class I milk unless a lower classification is requested and the operator of the nonpool plant makes available to the market administrator books and records for the purpose of verifying the receipts and utilization of milk and milk products at the nonpool plant. To determine such lower classification, the nonpool plant's utilization must be assigned to its receipts of milk from various sources.

Under the adopted assignment priorities, the first step is to assign the nonpool plant's Class I utilization to its receipts of packaged fluid milk products from all federally regulated plants. Such receipts should receive first priority on the nonpool plant's Class I use since all orders provide that such packaged transfers from a pool plant to an unregulated nonpool plant shall be classified as Class I milk. Thus, any Class I route disposition of the nonpool plant in the Carolina marketing area, and any transfers of packaged fluid milk products from the nonpool plant to Carolina pool plants, would be assigned, first, to the nonpool plant's receipts of packaged fluid milk products from plants fully regulated under the Carolina order and, second, to any such remaining packaged receipts from plants fully regulated under other Federal orders.

A similar assignment of any such remaining disposition (i.e., the aforesaid Class I route disposition and transfers of packaged fluid milk products) then would be made to the nonpool plant's receipts of bulk fluid milk products from pool plants and other order plants. Any other Class I disposition of packaged fluid milk products from the nonpool plant, such as route disposition in unregulated areas, would be assigned to any remaining unassigned receipts of packaged fluid milk products at the nonpool plant from plants fully regulated under any Federal order.

After these assignments, any Class I use at the nonpool plant that is attributable to the Class I allocation at a Federal order plant of fluid milk products transferred in bulk from the nonpool plant to the regulated plant would be assigned. Such use would be assigned first to the nonpool plant's remaining unassigned receipts of fluid milk products from plants fully regulated under the Carolina order and second to any such remaining receipts from plants fully regulated under other orders.

Any remaining unassigned Class I utilization at the nonpool plant then would be assigned to the plant's receipts of Grade A milk from dairy farmers and unregulated nonpool plants that are determined to be regular sources of Grade A milk for the nonpool plant. Any remaining unassigned receipts of fluid milk products at the nonpool plant from plants fully regulated under any order would be assigned to any of the nonpool plant's remaining Class I utilization, then to its Class III utilization, and then to its Class II utilization.

Following these assignments, any receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants would be assigned to the nonpool plant's remaining unassigned utilization in each class. Such assignment would be made in sequence beginning with the lowest class.

In determining the classification of any transfers or diversions from a pool plant to a nonpool plant, the utilization of any transfers from the nonpool plant to another unregulated nonpool plant also must be established. In this case, the same assignment priorities just outlined should apply also at the second nonpool plant.

The method herein provided for classifying transfers and diversions to nonpool plants accords equitable treatment to order handlers and also gives appropriate recognition to handlers in other regulated markets in the classification of milk transferred to a common nonpool plant. Giving highest use priority to dairy farmers directly supplying a nonpool plant recognizes that they are the regular and dependable source of supply of milk for fluid use at such plant. The proposed method of classification will safeguard the primary functions of the transfer and diversion provisions of the order by promoting orderly disposal of reserve supplies and in assuring that shipments to nonpool plants will be classified in an equitable manner.

Allocation of receipts to utilization. Because the value of producer milk is based on its classification, the Carolina order must provide a procedure for assigning a handler's receipts from different sources to the handler's utilization for the purpose of establishing such classification.

The order proponents testified that the system of allocating handlers' receipts to the various classes should be the same as that adopted in the Assistant Secretary's decision dealing with the classification, allocation and pricing of other source milk issued July 7, 1964 (29 FR 9110), commonly known as the "compensatory payment" decision.

The "compensatory payment" decision dealt with the issue of integrating into each order's regulatory plan milk which is not subject to classified pricing under any order and receipts at pool plants from other order plants. The decision established a procedure for allocating over a pool plant's total utilization the receipts at the plant from all nonpool sources and for making payment into the producer-settlement fund on unregulated milk allocated to Class I.

Proponents' representative testified that the method developed for all Federal milk marketing orders as discussed in the 1964 decision is appropriate in the proposed marketing area and will coordinate these regulations with respect to the treatment of unregulated milk and other order milk with comparable regulations under other Federal orders.

The aforesaid decision sets forth the standards for dealing with unregulated milk under Federal orders and the system of allocation to be included in all orders. It describes the appropriate treatment of other order milk received at pool plants that is used for coordinating the applicable regulations on all movements of milk between Federal order markets. This record indicates that the findings and conclusions of the aforesaid decision are equally applicable under current conditions in the proposed marketing area.

The order also provides that handlers using certain types of other source milk (whether in the form received or in reconstituted form) in the processing of Class II products be permitted to have such other source milk allocated directly to their Class II uses. Under the classification plan provided herein, such other source milk to which direct allocation could apply would be limited to milk products (such as nonfat dry milk and condensed milk or skim milk) that are not fluid milk products or fluid cream products.

Handlers rely largely on producers for a regular supply of milk for the products herein included in Class II. The major use of other source milk in making these Class II products is the addition of nonfat dry milk to cream products, mainly half and half, and to skim milk being used for the manufacture of cottage cheese. On occasion, when producer supplies are short, handlers also may reconstitute nonfat dry milk for cottage cheese production. Condensed milk or skim milk may be similarly used. Handlers choosing to use such other source milk in this way should be permitted to have such milk allocated directly to their Class II utilization rather than allocated first to any Class III utilization they may have.

It is not intended that the Class II outlet for producer milk necessarily be reserved for local producers. This use class merely recognizes that some additional value attaches to producer milk used by regulated handlers in the Class II products. Pricing this milk at a level above the Class III price serves also to reduce the burden on the Class I price of attracting a supply of producer milk for the Class I market. It is not intended that producer returns be enhanced for the purpose of also attracting a full supply of producer milk for handlers' Class II uses. Accordingly, no obligation to the pool (commonly

known as a compensatory payment) would be imposed on any other source milk which regulated handlers may use in Class II or in any Class II products that may be distributed in the market by nonpool plants, either directly on routes or through pool plants.

As long as the Class II price for producer milk remains in proper relationship with the cost of alternative supplies, it is not expected that this direct allocation of nonfluid other source milk to Class II will induce handlers to use other source milk in preference to producer milk for processing Class II products. Under the adopted Class II price, producers would represent in most circumstances the most economical source of milk for Class II use. As indicated elsewhere, this would be so with respect to the alternative use of nonfat dry milk, the type of other source milk most commonly used in Class II products.

Nonfat dry milk has certain advantages for handlers that producer milk cannot provide. It can be added easily to milk or milk products to increase their nonfat milk solids content. Also, its storability permits handlers to have a concentrated form of nonfat milk solids on hand at all times for emergency use. Nevertheless, the higher cost of nonfat dry milk relative to producer milk would tend to limit its use to only those situations where the nonfat dry milk has a distinct processing advantage for handlers.

No provision should be made for the direct allocation of a handler's Class II utilization of other source milk received in fluid form. Unlike the handling of nonfat dry milk, it would not be unusual for a handler to commingle receipts of fluid other source milk with receipts of producer milk. In this circumstance, it would not be possible to know just how much of the other source milk may have been used in the processing of a Class II product. The difficulty which a handler would have in demonstrating the actual use of fluid other source milk in a Class II product, and the administrative difficulty in verifying such claimed use, warrants the allocation of such milk to Class III.

It should be noted that the order would provide for the specific allocation to a handler's Class II and Class III utilization of any receipts of bulk fluid milk products from any other order plant or an unregulated supply plant for which the handler requests a Class II or Class III classification. Such receipts would be allocated to the extent possible first to the handler's Class III utilization and then to his Class II utilization. This would be the case even if a Class II classification were requested by the handler.

The attached order provides that, in the case of a multiple-plant handler, each of the handler's pool plants shall be considered separately for purposes of allocating receipts to utilization. In accordance with the "compensatory payment" decision referred to earlier, however, certain receipts of milk from unregulated supply plants and other Federal order plants are to share in varying degrees with local producer milk in the receiving handler's Class I utilization at all of the handler's pool plants combined. The order, therefore, provides a procedure whereby the milk from unregulated supply plants and other order plants is classified on the basis of the handler's total system, but is assigned to classes at the pool plant of actual receipt. Under this procedure, the situation may arise where there is not enough utilization in a specific class at the plant of actual receipt to which such other source milk must be assigned (as determined from receipts and utilization of a handler's entire system). In this case, an accounting technique is used for increasing the utilization in such class at the plant of actual receipt and making a corresponding reduction in the same class at one or more of such handler's other pool plants in the system. This technique, however, does not change the amount of milk to be accounted for at each plant or the classification of milk within the handler's entire system.

One of the witnesses testifying for Coburg Dairy proposed that the provisions of the Carolina order be modified with respect to the charge imposed upon a handler that uses a non-fluid milk product to produce a fluid milk product. The charge proposed for the Carolina order is the difference between the Class I price and the Class III price.

Coburg's witness indicated that with the assignment of other source milk to Class III and the imposition of a rate of payment at the difference between the Class I and the Class III price, the total cost to a handler for a fluid milk product reconstituted from a non-fluid milk product will, under normal circumstances, exceed the price set under the Federal milk order. This occurs because the costs associated with the manufacture, marketing, and transporting of the non-fluid milk product also accrue to the handler.

The witness proposed two alternative methods of equating the cost of reconstituted milk with the cost of milk obtained from producers in the local market. One alternative would allow for the reclassification in the market of origin of the non-fluid milk product used to reconstitute the fluid milk product as an option for the handler who can establish the source of the non-fluid milk product as an other order plant. The second alternative would be to base the rate of payment on the difference between the market price of the nonfat milk solids and the Class I value of such solids in the market of origin.

Coburg's witness also indicated that recognition should be given to the likelihood that if reconstitution takes place today, it will be from concentrated milk manufactured by a reverse osmosis process. He noted that such concentrated milk product is classified as Class II milk in most Federal milk orders. He contended that if the concentrated milk product were reconstituted into a fluid milk product, a charge at the difference between the Class III price and the Class I price would not be appropriate.

The reconstitution charge adopted in the Carolina order is the same as the one applicable in most other Federal milk orders. Thus, if the reconstitution charge were modified in the Carolina order, there would not be uniformity of classification of the reconstituted milk product with other Federal milk orders. It is concluded, therefore, that a reconstitution charge at the difference between the Class III and the Class I price should apply in the Carolina order until such time that this issue can be reviewed on a national basis.

Classification of end-of-month inventory. The order should provide for the classification of inventory on hand at the end of the month. Fluid milk products in either packaged or bulk form that are in a handler's end-of-month inventory should be classified as Class III milk. Ending inventory of fluid cream products, eggnog, and yogurt, when held in bulk form, likewise should be classified in Class III. Such products held in packaged form at the end of the month should be classified as Class II milk.

Inventories classified in Class III should be subject in the following month to reclassification in a higher class, as determined through the allocation of receipts to utilization. A charge to the handler at the difference between the Class III price for the preceding month and the Class I or Class II price, as applicable, for the current month would apply to any reclassified inventory.

Because of the regulatory treatment being accorded certain other source milk, it is necessary that fluid cream products, yogurt and eggnog on hand in packaged form at the end of the month

be classified in Class II, the class of expected ultimate use, rather than in Class III as would be the case for ending inventories of such products in bulk form. The higher classification will accommodate the treatment adopted herein whereby such products that are received at a pool plant in packaged form and disposed of in the same packages would be permitted to "pass through" the plant without any pool obligation or down-allocation. In this connection, the ending Class II inventory, as Class II inventory on hand at the beginning of the next month, would be allocated in such month directly to the handler's Class II utilization.

For the first month the order is in effect, a slightly different classification of inventory must apply. Beginning inventories of fluid cream products in packaged form normally would be allocated directly to a handler's Class II utilization. Such allocation assumes that the products were priced at the Class II price in the preceding month. Since this would not be the case for the first month under the new order, such inventories should be allocated in the first month to the extent possible to Class III, as in the case of inventories of fluid milk products and bulk fluid cream products. A reclassification charge should apply in the following month if a higher classification results.

(c) *Pricing of milk.* In order to promote and maintain orderly marketing conditions for the Carolina market, minimum class prices for producers should be established at levels that reflect economic conditions affecting the market supply and demand for milk. Such prices should result in returns to producers that will encourage a supply of milk sufficient to meet the fluid needs of the market, plus a reserve to provide for daily and seasonal fluctuations in demand.

The Class I price must not be so high as to attract unneeded supplies to the market. On the other hand, the price should be high enough to encourage the production of an adequate quantity of high-quality milk required for the fluctuating daily and seasonal fluid needs of the market.

The Class II price should be high enough above the manufacturing milk price to compensate producers for at least a part of the cost of delivering Grade A milk to regulated handlers for cream products, cottage cheese, ice cream, and related items for which handlers want Grade A milk.

The Class III price must be fixed at a level that will insure that milk produced in excess of the Class I requirements of the market can be processed into Class III products and disposed of in competition with similar products from unregulated manufacturing plants.

The class prices and uniform producer prices for milk should be announced on a per hundredweight basis. Because the order would not establish different values for butterfat in each class, the class prices would not be announced for a particular butterfat content of milk. Uniform prices to producers, however, would be announced on a 3.5 percent butterfat basis, and handlers would be required to pay producers for their milk at the uniform price adjusted by a butterfat differential to reflect any variation from 3.5 percent in the butterfat content of their milk. These provisions are consistent with such provisions widely applicable throughout the Federal order system.

Class I price and in-area location adjustments. The Class I price for the Carolina market should be computed by adding a Class I differential of $3.08 to the "basic formula price" for the second preceding month. The Class I price applicable at specific locations within the marketing area should be determined by adjusting the announced Class I price by the location adjustment established for the zone in which a plant is located. The in-area zones and applicable location adjustments are defined as follows:

Northwestern Zone—Minus 15 cents ($2.93)

North Carolina Counties: Alexander, Alleghany, Ashe, Avery, Buncombe, Burke, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, McDowell, Macon, Madison, Mitchell, Rockingham, Stokes, Surry, Swain, Transylvania, Watauga, Wilkes, Yadkin and Yancey.

Base Zone—No Adjustment ($3.08)

North Carolina Counties: Alamance, Anson, Cabarrus, Caswell, Catawba, Chatham, Cleveland, Davidson, Davie, Durham, Forsyth, Franklin, Gaston, Granville, Guilford, Halifax, Iredell, Lee, Lincoln, Mecklenberg, Montgomery, Moore, Nash, Northampton, Orange, Person, Polk, Randolph, Richmond, Rowan, Rutherford, Stanly, Union, Vance, Wake and Warren.

South Carolina Counties: Abbeville, Anderson, Cherokee, Chester, Greenville, Greenwood, Lancaster, Laurens, McCormick, Oconee, Pickens, Spartanburg, Union and York.

Southeastern Zone—Plus 15 cents ($3.23)

North Carolina Counties: Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Edgecombe, Gates, Greene, Harnett, Hertford, Hoke, Hyde, Johnston, Jones, Lenoir, Martin, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Robeson, Sampson, Scotland, Tyrrell, Washington, Wayne and Wilson.

South Carolina Counties: Aiken, Allendale, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Chesterfield, Clarendon, Colleton, Darlington, Dorchester, Dillon, Edgefield, Fairfield, Florence, Georgetown, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Marlboro, Newberry, Orangeburg, Richland, Saluda, Sumter and Williamsburg.

The basic formula price should be the average pay price for manufacturing grade milk at plants in the States of Minnesota and Wisconsin. The price for milk used for fluid purposes in the market has a direct relationship to the prices paid for milk used for manufacturing purposes. The Minnesota-Wisconsin price, or "M–W" price, used in determining the price for Class I milk gives appropriate consideration to the economic factors underlying the general level of prices for milk and manufactured dairy products. It is used as the basic formula price in all Federal order markets and is equally appropriate for use in the Carolina order. The differential over manufacturing milk prices is necessary to reflect the added cost of meeting quality requirements in the production of milk for fluid use and the cost of moving it to market.

Proponents of the order proposed that the Minnesota-Wisconsin manufacturing milk price be the basic formula price each month. This price is an average of prices paid at a large number of manufacturing plants in the two States. Plant operators report the total pounds of manufacturing grade milk received from dairy farmers, the total butterfat content, and the total dollars paid to dairy farmers for such milk f.o.b. the plant. These prices are reported on a current basis. The "M–W" price is announced by the Department for each month on or before the 5th day of the following month.

The proponents of the order proposed that the base zone include the metropolitan areas of Raleigh, Durham, Greensboro, Winston-Salem, and Charlotte, North Carolina, as well as Greenville, South Carolina, where no location adjustment would apply. The proposed in-area zone pricing system would have a minus 15-cent adjustment to the northwest, a plus 15-cent

adjustment to the southeast, and a plus 30-cent adjustment in the southern zone. The southern zone would include the South Carolina counties of Allendale, Beaufort, Berkeley, Charleston, Colleton, Dorchester, Hampton and Jasper.

Proponents' witness testified that a $3.08 Class I differential should apply in the base zone, which is the major population corridor of the proposed marketing area. The $3.08 Class I differential, he said, is the same as contained in the Georgia Federal order for the Atlanta and Athens areas. He said that the $3.08 Class I differential is 31 cents higher than the differential for Bristol, Virginia, and Kingsport and Knoxville, Tennessee, under the Tennessee Valley Federal order. The witness said that the $3.08 Class I differential is 5 cents higher than the Class I differential applicable at Washington, DC, under the Middle Atlantic Federal order.

The spokesman for proponents testified that the proposed graduated pricing system covers a marketing area of approximately 250 miles and reflects a location adjustment rate of about 2 cents per hundredweight per 10 miles. He said that the proposed pricing structure will provide the proper balance between adequate milk supplies and the necessary alignment of prices, not only with nearby and adjacent Federal order areas, but also among handlers located within the proposed Carolina marketing area.

At the hearing, opposition testimony to the proposed pricing zones was presented by the Commissioner of Agriculture for South Carolina, Regis Milk Company (Regis), Coburg Dairy (Coburg) and Edisto Milk Producers Association (Edisto).

The Commissioner of Agriculture for South Carolina expressed the view that only two pricing zones should apply to South Carolina and that the southern zone should be eliminated. The witness for Regis, which is located in Charleston, South Carolina, testified that there should be only one zone for South Carolina. He said that Regis sells about 90 percent of its packaged milk in the proposed southeastern and base zones. The proposed plus location adjustment for the southeastern zone, he said, would put their operation (in the southern zone) at about a one to two cent per gallon disadvantage with distributing plants located in the southeastern zone.

The President of Coburg testified that Coburg, which is in Charleston, South Carolina, distributes packaged milk throughout most of South Carolina and into Savannah, Georgia. He said that if the Department believes that a location adjustment is necessary in South Carolina, the proposed southeastern and southern zones should be combined into one zone with no more than a 10-cent higher price than the base zone. The proposed northwestern zone, he said, should be combined with the base zone. The witness said that the proposed plus 30-cent location adjustment for the southern zone would be disruptive to Coburg. Milk distribution, he said, is dominated by large grocery chains with warehouses and some of these grocery chains have distributing plants located in the proposed lower-priced zones.

Another witness for Coburg testified that location adjustments have done little to move bulk milk from production areas to metropolitan centers in recent years, but continue to help align minimum prices among competitors regulated by different Federal milk orders. In his view, location adjustments for South Carolina would not be appropriate, in part, because South Carolina has been without zone pricing and competition with distributing plants to the south and east is minimal. He said that Coburg does not compete with any distributing plant to the east or south of Charleston. Charleston, he said, is the main distribution area for Coburg and that its nearest competitor under another Federal order is located about 200 miles southwest of Charleston and that they compete in the Savannah, Georgia, area. The witness said that the proposed southeastern and southern zones should be combined and that the price should be $3.18, which is the Class I price applicable to the central zone of the Georgia order. He said that Coburg receives about 75 percent of its milk supply from farms located within 75 miles of its plant. These farms, he said, are located within the proposed plus 15-cent location adjustment zone. The witness said that Coburg pays the same price to its supplier (Edisto) as is paid by other buyers of milk from producers located in the central South Carolina area.

The witness for Edisto testified in support of Coburg's position. He said that the order proponents' proposed zoning in the short-run may benefit Edisto. However, in the long-run he believes that Edisto's milk supply would not be as attractive to Coburg. He said Edisto then would have to incur higher hauling costs to move their milk production to more distant plants.

This decision provides for three pricing zones rather than the proposed four pricing zones. The proposed southeastern and southern zones are combined into one zone, the southeastern zone, with an applicable plus 15-cent location adjustment.

Proponents of a higher price for the southern zone have not made a case for the proposed pricing on the basis that a higher price is needed to obtain a milk supply for plants in the Charleston area or to align Class I prices in the southern zone with a neighboring Federal order market.

There is no indication on this record that handlers located in the proposed southern zone are paying any more for milk than their competitors who are located in the proposed plus 15-cent location adjustment zone. Furthermore, if supplemental milk supplies are needed by one of the plants at Charleston, South Carolina, the plants should be able to procure a milk supply at no greater cost than a plant located at Goldsboro, North Carolina, which is located within the proposed plus 15-cent location adjustment zone. In that regard, it is noted that the Charleston plants are located nearer to alternative milk supply locations in the Knoxville, Tennessee, area or Asheville, North Carolina, area than the Goldsboro plant. (The Household Goods Carrier Bureau, Guide No. 13, of which official notice is taken, indicates that the highway mileages from Knoxville to Charleston and Goldsboro are 362 and 384, respectively, and from Asheville to Charleston and Goldsboro are 257 and 279, respectively.)

A plus 15-cent location adjustment for plants in the southeastern zone (a $3.23 Class I differential) also provides reasonable alignment with the $3.38 Class I differential applicable at the Savannah, Georgia, plant that is regulated under the Georgia order. The distsnce between Charleston and Savannah according to the mileage guide officially noticed is 105 miles.

The pricing structure provided under the 3 zones should result in an adequate milk supply for the various population centers of the two States. The pricing zones increase from the northwest to the southeast in recognition that supplemental milk supplies for the Carolinas are obtained primarily from dairy farmers in Kentucky and Tennessee. The 15-cent incremental increases from zone to zone should result in an adequate milk supply for plants in the 3 zones. The proposed zone pricing should make dairy farmers in Kentucky and Tennessee indifferent as to whether their milk is delivered to plants in the northwestern zone, the base zone or the southeastern zone by providing additional compensation to them for the added cost of transporting their milk to the progressively more distant plants in the marketing area.

The Carolina Federal Order Committee excepted to the Department's decision to combine the proposed "Southern" and "Southeastern" zones into a single zone. They indicated that milk to meet the needs of Charleston, South Carolina, handlers must be obtained from supplies located in other price zones to the west and/or northwest.

The arguments presented in the exception were also presented at the hearing. Accordingly, such arguments were fully considered in formulating the recommended decision to combine the proposed "Southern" and "Southeastern" zones into a single zone. The exception to combining the two zones is hereby denied.

Out-of-area location adjustments. The Class I price at plant locations outside the marketing area should be the base zone price plus or minus the following location adjustments:

(1) For a plant located within the Tennessee Valley Federal order marketing area, except Kentucky and West Virginia counties, the adjustment should be minus 31 cents;

(2) For a plant located within the State of Florida, the adjustment should be a plus 50 cents;

(3) For a plant located outside the marketing area and the areas specified in paragraphs (1) and (2) above and south of a line extending through the southern boundary of the State of Tennessee and east of the Mississippi River, the adjustment should be the adjustment applicable at Anderson, North Augusta, or Hardeeville, South Carolina, whichever city is nearest;

(4) For a plant located outside the area specified in paragraph (1) above and in the State of Virginia, the adjustment should be the adjustment applicable at Reidsville, Roanoke Rapids, or Elizabeth City, North Carolina, whichever city is nearest; and

(5) For a plant located outside the marketing area and the areas specified in paragraphs (1), (2), (3), and (4) above, the adjustment should be minus 2.5 cents for each 10 miles or fraction thereof (by the shortest hard-surfaced highway distance as determined by the market administrator) that such plant is from the nearer of the city halls in Greenville, South Carolina, or Charlotte or Greensboro, North Carolina.

The out-of-area location adjustments provided herein should reasonably align any plant that might be pooled on the Carolina Federal order with nearby Federal orders. For a plant located in one of the Tennessee counties included in the marketing area of the Tennessee Valley Federal milk order, the out-of-area adjustment provided herein results in the same Class I price such plant would have if regulated under the Tennessee Valley order. A plant located in the State of Florida would have the same Class I differential under the Carolina order that a plant located in the Upper Florida marketing area would have under the Upper Florida order. For plants located in Georgia or Virginia (exclusive of the Virginia counties in the Tennessee Valley marketing area), the location adjustment applicable at such plants would be based upon the location adjustments at the nearer of certain selected cities in South Carolina and North Carolina, respectively. In general, such pricing should result in a Class I price equivalent to the handler's nearest competitor located in the Carolina marketing area.

For plants located outside the State of Virginia and in areas north of the southern boundary of Tennessee (except the Tennessee counties in the Tennessee Valley marketing area) and west of the Mississippi River, the location adjustment rate should be 2.5 cents per hundredweight per 10 miles from the nearer of (Greenville, South Carolina, or Charlotte or Greensboro, North Carolina. Such rate is the same as the rate used in the two adjoining Federal order markets for pricing milk received at plants located quite some distance from the marketing area. Accordingly, the 2.5-cent rate should be appropriate for this market.

Location adjustment credits. In conjunction with its pricing proposal, proponents of the order proposed that a pool plant transferring fluid milk products in bulk form for Class I use to a pool distributing plant at which a higher Class I price applies be accountable for such products at the higher price applicable at the transferee plant. Under the proposal, however, the transferor plant would receive a location adjustment credit against the higher price equal to the difference between the Class I differentials applicable at the two plants. This is intended to encourage the movement of milk to market center for Class I use.

When the operator of a supply plant located in an outlying area ships milk to a distributing plant where a higher Class I price is applicable, the supply plant operator cannot pay both the higher price and the transportation costs for hauling the milk to the distributing plant. Thus, a lower Class I price is needed at the supply plant location to reflect the cost of moving the milk to the distributing plant. Such price reductions, however, reduce the total value of the pool. In addition, if supply plant milk replaces local milk going to a distributing plant for Class I use, this further reduces the total pool value. Thus, shipments from outlying supply plants to distributing plants should be made only when such shipments are necessary to meet the fluid milk needs of distributing plants.

Therefore, the limitations on location adjustment credits proposed are adopted. These provisions limit the amount of location adjustment credit on the transferee plant's Class I sales that remain after subtracting receipts of milk from producers, cooperative bulk tank handlers and packaged fluid milk products from other pool plants. Unnecessary transfers are further discouraged by the provision which gives priority in receiving credits to transferor plants located nearest the transferee plant. The adopted location adjustment provisions complement the zone price structure as a means of encouraging the movement of bulk fluid milk products to centers of demand for Class I use. However, the provisions do not give price credits to cover unnecessary hauling of milk between pool plants for other than Class I use.

To accommodate the intent expressed by proponents, the location adjustment credit provisions that were set forth in the notice of hearing have been modified accordingly.

Class III price. The Class III price should be the basic formula price for the month, as proposed by the order proponents.

Reserve milk disposed of in manufactured product uses should be priced at a level that will result in the orderly disposition of the excess supplies. Establishment of a price too high to clear the market of milk excess to fluid requirements would interfere with the orderly marketing of milk for both processors and producers. Fixing a price too low would encourage handlers to associate additional supplies with the market simply to obtain low-cost milk for manufacturing uses.

The Minnesota-Wisconsin price is the best available indicator of the value of milk used in butter, nonfat dry milk and cheese, which are usually the last-resort uses for surplus milk. The M–W price is an average of the prices being paid by processors of these products who are meeting the competitive test of the unregulated marketplace. Use of the M–W pay price series for the Carolina market will provide consistency between this order and other Federal order markets which also use the M–W price series as the basic formula price for pricing Class III milk. In addition, it achieves parity between regulated and unregulated plants since it provides the regulated manufacturer with essentially

the same margin for processing as is experienced in the unregulated market.

Class II price. The order should provide that the market administrator shall announce on or before the 15th of the month a Class II price that is to be effective the following month. The Class II price for the month should be the Minnesota-Wisconsin (M–W) price for the second preceding month, as adjusted by an "updating" formula, plus a Class II differential computed from a 12-month moving average of past Class II differentials. To the extent that the announced Class II price without adjustment for any prior month is less than the Class III price for such month, such difference would be included in computing subsequent months' Class II price.

For example, the Class II price for January would be announced on December 15th. On February 5, the January Class III price would be announced. If the January Class II price was less than the Class III price for January, that difference would be included in computing the Class II price for March, which would be announced on February 15. Thus, handlers would pay essentially a Class II price that would be floored by the Class III price. However, if the Class II price is less than the Class III price, the adjustment to reflect this difference would not be returned to producers until they receive payment for milk produced in the second succeeding month.

The procedures adopted are patterned after those that were provided for 29 markets in a final decision issued July 8, 1981, and published in the **Federal Register** on July 14, 1981 (46 FR 36151) and a 14-market final decision issued August 17, 1982, and published in the **Federal Register** on August 25, 1982 (47 FR 37187). In addition, the procedures adopted herein incorporate the modifications contained in an interim decision issued November 8, 1989, and published November 15, 1989. These changes are based upon a hearing held on August 23, 1989, at Alexandria, Virginia, to consider changing the manner in which the Class II milk price is determined and announced in 39 Federal milk orders and the proposed Carolina milk order.

To achieve the foregoing, the order should provide for a "basic Class II formula price" for the month, which would be the order's basic formula price (i.e., the M–W price) for the second preceding month plus or minus an amount computed from the "updating" formula. In essence, a tentative estimate of the M–W price for the preceding month would be derived from the mechanics of the updating formula. This would permit the Class II price to be based on selected dairy industry data for that month rather than for the second preceding month.

The updating formula would determine first the amounts by which the gross values of milk used to manufacture cheddar cheese and butter-nonfat dry milk for the first 15 days of the preceding month are greater than or less than the respective values of such milk for the first 15 days of the second preceding month using yield factors provided by the Dairy Price Support Program. Thus, the relative proportions of milk used in Minnesota and Wisconsin combined in the manufacture of cheddar cheese and butter-nonfat dry milk would be determined from data reported by the Department. From the foregoing data, a weighted average of the changes in gross values per hundredweight of milk would be computed.

The Class II price for the month would be the basic Class II formula price for the month plus a differential that would be the amount by which a 12-month moving average of the basic formula price plus the 10-cent Class II differential of the order exceeds a 12-month moving average of the basic Class II formula price. This should result in a Class II price that on the average exceeds the Class III price by a 10-cent differential.

The basic Class II formula price and the Class II price would be computed by the Dairy Division, AMS, and transmitted to the market administrator on or before the 15th day of the preceding month, enabling the market administrator to announce by that time the Class II price for the following month. The adoption of the proposal for advance notice of the Class II price is a reasonable means of assisting handlers in the marketing of milk. Handler witnesses said that the dairy industry is somewhat unique in that regulated handlers process and sell products without knowing the cost of the raw milk. This practice makes it difficult, if not impossible, to adjust resale prices to changes in ingredient costs. To them, this is an unwarranted and unnecessary situation which creates undue business risks and other difficulties without any real benefit to others.

The provision for advance pricing under the Carolina order will contribute to more orderly marketing for the processors of Class II products. Handlers will be in a better position to plan their processing and marketing with advance knowledge of their raw milk costs. Also, the advance pricing procedure will enable handlers to establish and adjust resale prices of Class II products more currently relative to the changes in raw milk costs.

The procedure provided herein for announcing a Class II price for a month on or before the 15th day of the previous month is identical to the procedures adopted for the 29 markets in the final decision of July 8, 1982, and, with some exceptions, to a 14-market final decision issued August 25, 1982. The above procedures as modified by the interim decision on changing the manner in which the Class II milk price is determined and announced (54 FR 47527) are appropriate for the Carolina order. The market administrator would announce publicly on or before the 15th day of each month a Class II price for the following month. Such price would be provided to the administrator of the Carolina order by the Dairy Division and would be determined from the method of computation specified in the order.

As provided in the attached order, the announced Class II price for the month would be the sum of the following price components: (A) The basic Class II formula price; and (B) the Class II differential.

A. *Basic Class II formula price.* The basic Class II formula price, which would be used in computing the Class II price that is announced for the month, would be determined by the Dairy Division, AMS, on or before the 15th day of the preceding month. Under the formula provided herein, it would be computed by increasing or decreasing the M–W price of the second preceding month by an amount that reflects changes in the gross value of milk used to produce cheddar cheese (including returns from whey fat and whey solids-nonfat), butter, nonfat dry milk and edible whey powder during the first 15 days of the preceding month compared to the first 15 days of the second preceding month. The gross value of milk used to produce these products would be determined by multiplying the price of each product by a yield factor which represents the pounds of product that results from the manufacture of a hundredweight of milk. The yield factors used in the formula adopted herein would be those that are used under the Dairy Price Support Program for determining similar gross values. Whenever the yield factors are changed, the new yield factors would be used in the formula beginning with the effective date of the announced support price or announced purchase prices.

The yield factors used under the Price Support Program are for milk of average butterfat content of 3.67 percent, while prices under the Federal milk order

program are announced for milk containing 3.5 percent butterfat. Milk containing higher proportions of butterfat yield more pounds of product per hundredweight of milk than does milk containing a lower butterfat content. However, using the price Support Program yield factors in the adopted formula should not appreciably affect the basic Class II formula prices. Only changes in gross values of milk from one month to another would raise or lower the basic Class II formula price. Those changes in gross values of milk should not be much different whether they are based on milk containing 3.67 percent butterfat or 3.5 percent butterfat.

The product prices that are used in the formula adopted herein would be those that are reported and published each week by the Dairy Division, AMS. The butter price would be that of the Chicago Mercantile Exchange for Grade A (92-score) butter. The cheddar cheese price would be that of the National Cheese Exchange for cheddar cheese in 40-pound blocks. The nonfat dry milk price would be the average price per pound (using the midpoint of any price range as one price) for high-heat, low-heat and Grade A nonfat dry milk for the Central States production area. If any of these nonfat dry milk prices are not reported at some future date, the price used in the formula would be the average of the remaining prices that are reported. The price for whey powder would be the average price per pound (using the midpoint of any price range as one price) reported for edible whey powder (nonhygroscopic) for the Central States production area.

Based on yield factors used currently under the Price Support Program, a hundredweight of milk used to produce cheddar cheese yields 10.1 pounds of cheddar cheese 0.25 pounds of butter and 5.5 pounds of whey powder. Prior to the Food Security Act of 1985, under the Price Support Program, the price of whey powder increased the gross value of milk used to produce cheddar cheese only to the extent of the portion of the price of powder that exceeded 12.5 cents per pound. This was because the processing cost of drying the whey into powder was 12.5 cents. If the price of whey powder were less than 12.5 cents per pound, the processing costs would be absorbed in the price of cheddar cheese. If the price of exceeded 12.5 cents, only that portion of the price that exceeded 12.5 cents would contribute to the gross value of milk.

A **Federal Register** document published on July 22, 1986 (51 FR 26254), containing a determination of the current Class II price in 39 Federal orders is officially noticed. The document points out that because of recent changes in the Price Support Program, the processing cost and yield factor for edible or dry whey are no longer being determined under that program and thus are not available for use under the Federal orders. The changes stemmed from the Food Security Act of 1985, which precludes the use of any market value of whey in determining the purchase price for cheese under the Price Support Program. The document notes that the use of a whey value in computing the basic Class II formula price in the 39 orders is needed. The document also points out that equivalent pricing factors were adopted for this purpose in a determination issued January 29, 1986, and published February 4, 1986 (51 FR 4374). The determination issued July 14, 1986, and published July 22, 1986 (51 FR 26254), states in part as follows:

"It is therefore ordered that a whey processing cost of 12.5 cents per pound and a yield factor of 5.5 pounds continue to be used as equivalent factors determining any positive whey value in computing the basic Class II formula price under the above-named orders, effective upon issuance of this determination".

Accordingly, in the formula adopted herein, the gross value of a hundredweight of milk used to produce cheddar cheese would be the sum of the following computations:

1. The average daily price per pound of cheddar cheese during the first 15 days of each respective month would be multiplied by 10.1. The National Cheese Exchange meets on Friday morning for trading in cheddar cheese. Generally, the prices reported for each session establish the prices of cheddar cheese sold by the dairy industry during the following week. When Friday is a holiday, the exchange meets on a Thursday morning. In the formula adopted herein, a price reported by Friday (or Thursday) would be applied to that day plus each workday of the following week prior to the day the Exchange meets. When there are workdays in a month that precede the first Friday of the month, the last price reported in the previous month would be applied to each such workday that precedes the first Friday. A workday would be each Monday through Friday, except national holidays. This definition of workday would apply also to the other product prices described in the following paragraphs. During a week that the Exchange does not meet, the prices applied for the following week would be the last Exchange price that was established.

2. The average daily price per pound of butter during the first day of each respective month would be multiplied by 0.25. The Chicago Mercantile Exchange also meets on Friday morning for trading in butter. When Friday is a holiday the Exchange meets on a Thursday morning. In the formula adopted herein, a price reported by Friday (or Thursday) would be applied to that day plus each workday of the following week prior to the day the Exchange meets. When there are workdays in a month that precede the first Friday of the month, the last price reported in the previous month would be applied to each such workday that precedes the first Friday. During a week that the Exchange does not meet, the price applied for the following week would be the last Exchange price that was established.

3. The average daily price per pound of edible whey powder during the first 15 days of each respective month would be reduced by 12.5 cents and any amount remaining would be multiplied by 5.5. The whey powder price is determined by the Department on Thursday of each week and reflects the selling price of whey powder during the preceding seven-day period. When Thursday is a holiday, the price is determined on Wednesday. In the formula adopted herein, a price determined on Thursday (or Wednesday) would be applied to that day plus each previous workday through the preceding Friday, or Thursday if the previous Price reported had been on Wednesday.

The gross value of a hundredweight of milk used to produce butter and nonfat dry milk would be determined in the following manner. The yield factor presently used by the Price Support Program indicates that one hundredweight of milk yields 4.48 pounds of butter and 8.13 pounds of nonfat dry milk. Thus, the average daily butter price per pound during the first 15 days of each respective month, as determined by the method described in (2) above, would be multiplied by 4.48.

Added to this value would be the value of milk used to produce nonfat dry milk. This would be computed by multiplying the average of the daily prices per pound of high-heat, low-heat and Grade A nonfat dry milk during the first 15 days of each respective month by 8.13. As with the whey powder prices, the prices of nonfat dry milk are determined on Thursday of each week and reflect the selling prices of nonfat dry milk during the preceding seven-day

period. When Thursday is a holiday, the price is determined on Wednesday. In the formula adopted herein, the average of the prices of the high-heat, low-heat and Grade A nonfat dry milk determined for Thursday (or Wednesday) would be applied to that day plus each previous workday through the preceding Friday, or Thursday if the previous price reported had been on Wednesday. As described previously, if any of these nonfat dry milk prices are not reported at some future date, the price used in the formula would be the average of the remaining prices that are reported.

The next computation in the formula adopted herein determines the amounts by which the gross values of milk used to produce cheddar cheese and used to produce butter-nonfat dry milk during the first 15 days of the preceding month exceed or are less than the respective gross values during the first 15 days of the second preceding month. This would be done by subtracting the respective gross values during the first 15 days of the second preceding month from the respective gross values during the first 15 days of the preceding month.

The quantity of milk used to produce cheddar cheese in the States of Minnesota and Wisconsin greatly exceeds the quantity used to produce butter-nonfat dry milk. Accordingly, the changes in gross values described in the previous paragraph should be weighted by the relative proportions of milk used to produce cheddar cheese and butter-nonfat dry milk in these two States. This would be done by converting the quantity of American cheese (cheddar cheese accounts for over 70 percent of all American cheese) and separately, the quantity of nonfat dry milk produced in the two States combined, as reported and published by the National Agricultural Statistics Service of the Department into the respective milk equivalents (i.e., dividing the two-State quantity of American cheese produced by the 10.1 yield factor for cheddar cheese and dividing the corresponding quantity of nonfat dry milk produced by its yield factor of 8.13). The percentage that the milk equivalent for each separate product is of the total for the two products combined would be multiplied by the respective change in gross values, as described in the previous paragraph, to determine a weighted change in gross values for milk used to produce cheddar cheese and used to produce butter-nonfat dry milk. The weighted changes in gross values would be combined and this combined value would be used to adjust the second preceding month's M–W price. If the combined value for the 15 days of the preceding month exceeds the corresponding value for the second preceding month, the adjusted M–W price would be increased. If it is lower, the adjusted M–W price would be the basic Class II formula price for the month.

B. *Class II differential.* In the formula adopted herein, the Class II differential would be an amount added to the basic Class II formula price for each month to yield a Class II price. It would be computed on or before the 15th day of the preceding month for use in determining the announced Class II price for the month. The differential would be the amount that the average M–W price during the most recent 12-month period plus the current Class II differential of the order exceeds the average basic Class II formula price during the same 12-month period.

Butterfat differential. The order should have a producer butterfat differential equal to .115 times the average wholesale price for Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. This differential was proposed by the order proponents and is common to most other Federal milk orders.

At the hearing, a witness on behalf of Milkco, Inc., Hunter Jersey Farms and Dairy Fresh, Inc., testified in opposition to the Proposed use of a factor of .115 in computing the butterfat differential. The spokesman said that for years in North Carolina and South Carolina, the butterfat differential has been based on the average wholesale price for Grade A (92-score) bulk butter per pound at Chicago times .1. He said that the proposed .115 factor would make it more costly for handlers to dispose of excess cream at various times during the year.

The witness testifying about marketing conditions in South Carolina estimated that the difference in the computation of the butterfat differential cost South Carolina dairy farmers about $400,000 per year. The witness testifying about marketing conditions in North Carolina estimated that the use of a factor of .115 would add 4 to 6 cents per hundredweight to producer pay prices.

A butterfat differential reflects the incremental value of milk containing more or less butterfat than the standard announced level. Weighted average and uniform prices under the order will be announced for milk containing 3.5 percent butterfat. Milk containing less than 3.5 percent butterfat will be worth less than the 3.5 percent price, while milk testing above 3.5 percent will be worth more than the announced price. This adjustment will insure equitable payments reflecting such variations in butterfat content of milk delivered by individual producers.

The butterfat differential adopted herein is the same as provided in two decisions to adopt uniform classification provisions in 39 markets. (These two decisions have previously been noticed.) Since the classification provisions of those decisions are adopted herein, it is appropriate to provide also for the same butterfat differential. This is clearly in line with order proponents' intent in this regard.

With regard to a proposal by a representative of 3 handlers that the butterfat differential be established by multiplying the Chicago butter price by a factor of .1, such modification is denied. If such modification were adopted, the value of butterfat and skim milk in the Carolina market would not be aligned with such values under neighboring Federal order markets. As previously noted, the proposed modification also conflicts with providing a classification for milk in the Carolina market that is consistent with the classification of milk in most other Federal milk orders.

Use of equivalent prices. If for any reason a price or pricing constituent needed by the market administrator in administering the order is not available, the market administrator is authorized by the order to use an equivalent price or pricing constituent as determined by the Secretary. Including such provision in the order will leave no uncertainty with respect to the procedure to be followed in the absence of any data customarily used and thereby will prevent interruption in the operation of the order.

(d) *Distribution of proceeds to producers.* Marketwide pooling of producer returns should be provided in the order as the means of distributing among producers the proceeds from the sale of their milk. Such pooling method will assure each producer supplying the market a proportionate share of the market's total Class I sales.

The record indicates that 23 fluid milk plants will most likely qualify for pooling under the new order. Most of these plants, if not all, are expected to have very high levels of Class I utilization. There are few Class III products produced in this market. Nevertheless, there will be some differences in utilization among the plants because of the production of Class II products such as ice cream and cottage cheese. A marketwide pool will facilitate the orderly marketing of producer milk by removing disruptive competition by producers for the high

Class I use outlets. Under individual handler pooling, the type of operations conducted at a plant would be a determining factor in the price the plant could pay its producers compared to other plants.

A marketwide pool also will make it possible for producer associations and pool plant operators to divert any weekly or seasonal reserves of milk to nonpool plants and maintain continuous producer milk status for such dairy farmers if their milk is needed to fulfill the year-round requirements of the market. This pooling technique will assist further in apportioning among all producers the lower returns from reserve milk in excess of the market's fluid requirements. In the absence of marketwide pooling, this burden would vary by individual plants and groups of producers.

A marketwide pool thereby will contribute to market stability and the maintenance of an adequate and dependable supply of producer milk at reasonable prices.

Computation of uniform price. A key feature of marketwide pooling is the computation of prices to pay producers. Under the order adopted herein, which includes a seasonal base-excess plan, a weighted average price would be computed each month. During the months of July through February, the weighted average price would be the uniform price and would be used to pay producers. Essentially, such price is the weighted average value of all of the milk in the pool. It would be computed by adding together the classified use value (or total pool obligation) of all of the handlers in the market. This total value is then divided by the amount of milk in the pool to arrive at a "uniform price" for producers.

In the months of March through June, uniform prices for base and excess milk would be computed by the market administrator. During each of these months, each producer would be paid on the basis of the producer's deliveries of base and excess milk. The findings on the base-excess plan describing the computation of the uniform prices for base and excess milk and the computation of an individual producer's base are found in a subsequent section of this decision.

In order to compute the uniform price or prices, the market administrator must first receive a report of receipts and utilization from each of the handlers in the pool.

Under the proponent cooperatives' proposed order, handler reports of receipts and utilization would have to be received by the market administrator by the 6th day of each month. Proponents' witness said that a reporting date of the 6th was needed to provide the market administrator with sufficient lead time to receive all of the reports, compute the marketwide pool and announce the uniform price or prices by the 10th day of each month.

Two witnesses, representing several handlers who would be fully regulated under the proposed order, stated that the dates included in the proposed order would not provide handlers sufficient time to accumulate the data necessary to file their reports of receipts and utilization. They proposed that the 7th rather than the 6th day be used as the reporting date.

The order should provide that a handler's report of receipts and utilization is due on or before the 7th day after the end of each month. This will provide the market administrator with sufficient time to receive the reports, review and correct them for obvious errors, compute each handler's value of milk and classified prices, compute the uniform price or prices and announce such price or prices by the 11th day of the month.

Also, each handler that is required by section 32 of the order to report the aggregate quantity of base milk during the months of March through June should do so on or before the 7th day after the end of the month rather than the 6th. All of the other dates (for reports, price announcements, and payments) specified in the order should be adopted as they were proposed by the proponents of the order.

It should be noted that the Georgia Federal milk order also provides that the report of receipts and utilization by handlers is due on the 7th day of the month and that the uniform price or prices are announced by the 11th day of the month. The Tennessee Valley Federal milk order, however, contains a reporting date of the 6th and a price announcement date of the 10th. Under the arrangements provided herein, handlers under the new order will be meeting about the same deadline with respect to these reporting functions as handlers under nearby orders. Also, producers supplying this market will receive their payments at about the same time as producers located in the same general area but who are supplying a nearby Federal order market.

The Carolina Federal Order Committee excepted to using the 7th day of the month as the date for filing handler reports and the 11th day of the month for the announcement of the uniform price or prices. They point out that the Tennessee Valley order uses the 6th and the 10th day, the same date as proposed by proponents of the orders.

Several handlers objected to the use of the 6th day of the month for filing reports. They indicated that such reporting date would not provide handlers sufficient time to submit their report. Furthermore, exceptors provided no clue why it is preferable to have the reports filed earlier than the 7th day of the month. Accordingly, the exception to the use of the 7th day of the month for filing reports and the 11th day of the month for the announcement of the uniform price or prices is hereby denied.

Producer-settlement fund. Marketwide pooling requires the use of an equalization (producer-settlement) fund which enables all handlers in the market to pay the minimum uniform price or prices to their producers.

Payment into the producer-settlement fund would be made each month by each handler whose total classified use value of milk exceeds the value of the handler's milk at the uniform price or prices. Monthly payments out of the producer-settlement fund would be made to each handler whose use value is below the value of milk at the uniform price or prices for the market. This transfer of funds enables handlers with a use value below the average for the market to pay their producers the same uniform price or prices as handlers whose Class I utilization exceeds the market average.

As proposed and adopted herein, payments by handlers into the producer-settlement fund would be due by the 12th day of each month so that the market administrator could make payments out of the producer-settlement fund by the 13th day of each month.

Such timing will enable the market administrator to receive the money in the fund and make the payments out of the fund each month at the earliest feasible date. In the event that the balance in the producer-settlement fund on the 13th is insufficient to make the required payments out the fund, the market administrator would reduce uniformly such payments. However, the market administrator would complete such payments to handlers as soon as the necessary funds become available.

The payment schedule adopted herein has no slack time for the announcement of the uniform price or prices. This time schedule recognizes the desire of producers that payment to them be as timely as possible. It provides, however, adequate transaction time as indicated earlier but, nevertheless, will require the cooperation of all handlers in the market to make it work as intended. Should any

problems in this regard develop, they could be examined at a future hearing.

Payments to producers and cooperative associations. Each handler under the order should pay each producer for milk received from such producer, and for which payment is not made to a cooperative, at not less than the applicable uniform price or prices. Provision also should be made for partial payments for milk received during the first half of the month.

Under the payment provisions adopted herein, a handler would be required to make a partial payment to producers who had not discontinued delivery of milk to such handler prior to the 25th day of the month for their producer milk deliveries during the first 15 days of the month. Such payment would be by the last day of the month and would be at not less than the Class III price for the preceding month or 90 percent of the preceding month's weighted average price, whichever is higher. Proper deductions authorized in writing by the producer could be deducted from the partial payment due such dairy farmers.

Under the payment provisions adopted herein, handlers would be required to pay producers on or before the 15th day of the following month at the applicable uniform price or prices for milk received from such producers for the preceding month. Final settlement for all of the producer's milk in the preceding month at the uniform price or prices would recognize the partial payment and any other proper adjustments verifiable by the market administrator.

In the event a handler has not received from the market administrator the full producer-settlement fund payment by the date such handler is required to pay producers, the handler may reduce the payments to producers on a pro rata basis. Such reduction should not exceed the amount of the underpayment. The handler would be required to complete the producer payments on the next date for making such payments following the receipt of the balance due from the market administrator.

Provision also is made in the attached order for a cooperative association to receive payment from handlers for milk of producers who elect to market their milk through such association. Providing for a cooperative association to collect payments due individual producers who have authorized the cooperative to collect such payments on their behalf will permit the cooperative association to reblend the proceeds from the sale of such milk, as authorized by the Act. Also, it will facilitate the cooperative's movement of milk among pool plants and disposal of reserve milk supplies to other plants for manufacturing use.

As provided in the attached order, each handler upon request should pay cooperatives the full amount due for producers' milk in lieu of payments to individual producers. Both the partial and final payments to a cooperative association should be made at least 2 days prior to the date payments are due to individual producers. This will enable cooperative associations to pay the producers for whom they market milk on the same day other producers supplying the market are paid.

The proposed order would permit cooperatives to collect payment with respect to the milk of nonmember producers who have authorized the cooperative to collect such payments. Such a payment procedure is appropriate in that it complements the treatment afforded the milk of producers for which the cooperative may be the handler.

The proposed order requires payment to a cooperative association on milk delivered to a pool plant by a cooperative association acting as a bulk tank handler. If such milk is paid for by the plant operator at the uniform price or prices, accounting for the milk under the order will be simplified considerably. This method of payment will facilitate any adjustment required when audits by the market administrator disclose an error in classification.

Payments to and from the producer-settlement fund for milk delivered to a pool plant by a cooperative bulk tank handler will be made directly between the pool plant operator and the market administrator. This procedure will place the responsibility for accounting for such milk and for its payments directly on the pool plant operator who processes the milk. If settlement were made through the cooperative association, i.e., when a pool plant operator settles with the cooperative at class prices and the cooperative pays into or collects from the producer-settlement fund, an unnecessary third party is entered into the transaction. By eliminating the cooperative as an intermediary between the pool plant operator and the market administrator with respect to transactions involving the producer-settlement fund, problems of financial responsibility, enforcement and subsequent audit adjustments will be greatly reduced.

For the foregoing reasons, the attached order would require a pool plant operator to pay the cooperative at least 2 days prior to the last day of the month for milk delivered to such plant during the first 15 days of the month by a cooperative bulk tank handler. The same partial payment rate that handlers pay individual producers would be used by handlers to make partial payments to cooperatives. By the 13th day of the following month, a pool plant operator would be required to make final settlement with the cooperative for the producer milk delivered to such plant in the preceding month by the cooperative as a bulk tank handler at not less than the appropriate uniform price or prices.

The attached proposed order provides that at the time final settlement is made for milk received from producers during the month, the handler is required to furnish each producer (or cooperative association) a supporting statement. This statement would indicate the month and identity of the producer, the daily and total pounds and average butterfat content of producer milk received from the producer, the minimum rate of payment required under the order, the rate used if it is other than the minimum rate, the amount and nature of any deductions, and the net amount of payment to such producer or cooperative.

Base and excess plan. A seasonal "base and excess" plan should be incorporated in the new order.

The purpose of a base-excess plan is to provide an incentive to producers to even out their milk production throughout the year, i.e., to encourage production in the months of seasonally low production and discourage excess production in the months of seasonally high production.

The spokesman for the order proponents testified that a seasonal base-excess plan should be used to distribute to producers the returns from the sale of their milk. He said that most producers who will be shipping milk to the plants that will be fully regulated under the Carolina Federal order have previously been paid on the basis of some form of base plan. The witness said that some of these producers have been on a base plan administered by the Tennessee Valley or Georgia Federal orders or have been paid under a base plan operated by either the States of North Carolina, South Carolina or Virginia.

There was no opposition to the use of a base-excess plan in the proposed Federal order although several parties objected to the proposed use of the months of August through November as the base-forming period. A representative for Piedmont Milk Sales and Southern Milk Sales and a representative for Edisto Milk Producers Association, Midlands Jersey Milk

Producers Association and Carolina Jersey Milk Producers Association testified that their organizations preferred that the base-forming period be September through December.

The witness for the proponents of the August through November base-forming months said that the Class I demand for milk drops off sharply the last week in December; otherwise, there is little difference in the Class I demand between August and December. He said that for August, the demand for milk relative to the supply of milk is comparable to the Class I utilization for the months of September through November.

The representative for Edisto testified that many of their members are located in the low country or coastal plains of South Carolina where they experience very hot and humid weather in July and August. He said that these dairy farmers have found it very difficult to breed their herds to freshen in July for peak production in August and subsequent months. He indicated that most of the order proponents' members are located in the Piedmont and mountain areas of North Carolina, South Carolina, Georgia and Tennessee where the temperature and humidity are less severe.

The order should provide that the base-forming months be September through November. This represents a change from the recommended decision in which the months of August through December were selected as the base-forming months. In view of the exceptions received to using the month of December as one of the base-forming months and the objections voiced at the hearing and in the exceptions received to using the month of August as one of the base-forming months, it is concluded that the base-forming period should be the months of September through November. These three months are months of high Class I utilization and should be appropriate for the base-forming months.

In their exceptions the North Carolina and South Carolina Farm Bureau Federations opposed using the months of August and December as base-forming months. Carolina Virginia Milk Producers Association also excepted to including the months of August and December as base-forming months. Both Farm Bureau Federations and the Carolina Virginia cooperative association suggested that a three-month base-forming period of September, October and November be used instead of the five-month period initially recommended.

The Carolina Federal Order Committee in their exceptions indicated that while they had not proposed using December as one of the base-forming months, they were not opposed to its inclusion.

An individual dairy farmer excepted to using August as one of the base-forming months.

The primary objection to using December as one of the base-forming months was that the Class I utilization was not great enough to warrant increased production that would result from using December as one of the base-forming months.

The principal objection to including August as one of the base-forming months was that dairy farmers in North Carolina and South Carolina would have difficulty in changing their milk production cycle to obtain increased milk production in the month of August due to heat and high humidity.

In view of the opposition expressed to the inclusion of the months of August and December, it is concluded that the base-forming months should be September through November.

In changing from a 5-month to a 3-month base-forming period, it is necessary to revise the minimum number of days that a dairy farmer must deliver milk to the market to receive an undiminished base. Since the months of September through November contain 91 days, a producer should be required to deliver at least 77 days of production to be accorded a full base. Such minimum delivery requirement will permit a producer who has been degraded a two-week period in which to regain Grade A status.

A base-excess plan for the proposed Carolina Federal order will provide a means of encouraging a level seasonal production pattern so that the milk production and fluid milk sales will be better coordinated during the year. For 1988, the record shows that for the two-State area, March had the lowest Class I utilization with about 80 percent while September had the highest Class I utilization with about 86 percent.

A low variation in milk production is beneficial to producers, handlers and consumers. This is because the cost of obtaining additional milk supplies in the months of short production is minimized. Also, the cost of disposing of excess milk production in the months of heavy milk production is also minimized.

The base-excess plan adopted in this decision, except for the base-forming months, is identical to that proposed by the order proponents. Each producer would be assigned a base computed by dividing the producer's total pounds of producer milk in September through November (the base-forming period) by the number of days' production represented in such producer milk deliveries or by 77, whichever is more. A single delivery by a producer on every-other-day delivery would be considered 2 days' production in computing a base.

The uniform (weighted average) price would be the minimum order price payable to producers for producer milk delivered during the base-forming months of September through November. Such price would also be payable to producers in the months of December, January, February, July, and August which would be neither base-forming nor base-paying months.

The base-paying months should be March through June, as proposed. These months form a period when milk production generally is high and Class I utilization of milk is low. Thus, it is a period when the base plan should discourage excessive production. This would occur because during the base-paying months, payments to producers would reflect a lower price for any excess producer milk delivered to the market. Thus, the operation of the base-excess plan should serve to maintain or perhaps improve, the seasonal production pattern of dairy farmers supplying the two-State area.

"Base milk" would be the producer milk of a producer in each month of March through June that is not in excess of the producer's base multiplied by the number of days in the month. "Excess milk" would be the producer milk of a producer in each month of March through June in excess of the producer's base milk for the month. Excess milk would include all of a producer's milk deliveries during March through June if such dairy farmer has no base.

The market administrator each year would compute a new base for each producer and, by February 1, would notify each producer and the handler receiving the milk from such producer of the producer's base. The market administrator would also notify a cooperative, if requested, of the amount of base assigned to each producer-member.

In computing the uniform prices for base and excess milk, Class III production would be assigned to excess milk first. If Class III producer milk in the market exceeds the pounds of excess milk deliveries by producers, the uniform price for excess milk will be the Class III price. In such case, the additional value for the remaining Class III producer milk as well as the values for Class I and Class II producer milk will be reflected in the uniform price for base milk.

As proposed by producers, the uniform price for excess milk should not

be subject to a location adjustment. Since excess milk would represent basically producer milk classified in Class III (milk for manufacturing uses) to which no location adjustment is applicable, the uniform price for excess milk should not be subject to a location adjustment. There is essentially no difference in the location value of milk for Class III uses. The Class III price under the Carolina order and other Federal milk orders is equal to the average price per hundredweight for the month of manufacturing grade milk f.o.b. plants in Minnesota and Wisconsin. If a location adjustment were applied to the uniform price for excess milk, it could result in applying an excess price to the producer milk at various plant locations that is less than the value of manufacturing grade milk delivered to those same plant locations.

A producer generally would deliver milk continuously throughout the base-forming period. However, because of various circumstances (e.g., storm damage at the farm or to roads, temporary suspension of a health permit or temporary loss of market when cut off by a buying handler), a producer may be off the market for a limited number of days during the base-forming period. In recognition of this, a producer who delivered at least 77 days' production during the base-forming period would have average daily deliveries computed on the same basis as a producer who delivered continuously throughout the entire period (by dividing the total producer milk deliveries by such dairy farmer during the three-month period by the number of days' production represented in such deliveries).

The requirement that a producer supply the market in the base-forming months in order to earn a base provides an incentive to ship to the Carolina market instead of to other markets in the months when production is low relative to the demand for Class I milk. A producer who ships at least 77 days' production during the three-month base-forming period can reasonably be considered as being fully associated with the market. A producer who delivered less than 77 days' production should have a base determined by dividing total production in the base-forming period by 77. Thus, a producer who may have been supplying the Class I needs of another market for a substantial part of the base-forming period would receive a base that reflects the producer's contribution toward supplying the fluid needs of the Carolina market in such period.

New producers coming on the market during the base-paying period would generally be dairy farmers who had supplied the fluid needs of another order market or an unregulated market during the base-forming period. Milk produced on their farms in the base-paying months would represent substantially milk that is surplus to the Class I needs of the market with which they had been previously associated. The deliveries of such producers during the base-paying months should be paid for at the excess milk price.

Also, persons who have not previously supplied a Class I market may become new producers on the new Carolina market. Included in this category would be dairy farmers who had previously been shipping manufacturing grade milk and persons starting new dairy farm operations. Before coming onto the market as a new producer, such a person would be expected to have anticipated in advance whether to begin shipping during the base-paying months of March through June or in any of the other eight months of the year. If the choice is to begin delivering as a new producer in one of the four base-paying months, presumably that decision would be made in recognition of the fact that the uniform price for excess milk would be received for milk delivered to the market in those months by producers without bases.

In some instances, a "natural disaster" may cause a producer to suffer a significantly reduced rate of production or force the producer to discontinue temporarily the production of milk on the farm. Unless provision is made in the order to give consideration to such occurrences in computing a producer's base, the producer would suffer an undue hardship. The order should specify the conditions under which relief may be granted to a producer whose production is adversely affected in the base-forming period as the result of an occurrence beyond the producer's control.

This can be achieved by providing that the base assigned to a person who was a producer within the preceding base-forming period may be increased to 90 percent of such person's daily average producer milk deliveries in the month immediately preceding the month during which such person's production was adversely affected by an allowable "hardship condition." Such relief would be granted only after the producer submitted to the market administrator by March a written statement that established to the satisfaction of the market administrator that the amount of milk produced on that farm in the preceding base-forming period was substantially reduced because of a condition beyond the producer's control which resulted from: (1) Loss by fire or windstorm of a farm building used in the production of milk on the producer's farm; (2) Brucellosis, bovine tuberculosis or other infectious diseases in the producer's milking herd, as certified by a licensed veterinarian; or (3) A quarantine by a Federal or State authority that prevents the dairy farmer from supplying milk from the farm of such producer to a plant.

The conditions under which we have proposed hardship relief encompass most natural disasters that could result in reduced production or in the temporary discontinuance of production on a dairy farm. Such a standard will provide the market administrator the guidance necessary for applying the provision in an objective manner.

Allowing hardship relief by assigning a producer a base of 90 percent of such producer's average daily producer milk deliveries in the month immediately preceding the month during which the hardship occurred provides an equitable standard for this purpose. Such a producer generally would not have shipped enough days' production in the base-forming period to have earned a base equal to such producer's average daily deliveries. To assign the producer a base equal to the producer's average daily deliveries in a single month could result in giving the producer more base than would have been earned if the producer had not suffered the hardship throughout the full base-forming period.

Producers whose milk was delivered to a nonpool plant that became a pool plant after the beginning of the base-forming period should be assigned bases in the same manner as if they had been producers during the base-forming period. Their bases would be calculated from their deliveries to that plant in the preceding September through November period.

To acquire pool plant status under the order, a plant must dispose of a specified percentage of its route dispositions on routes in the marketing area or to other pool plants. It is expected that when such a plant becomes a pool plant, it will add Class I sales to the pool comparable to such sales in prior periods when it was a nonpool plant. It is appropriate, therefore, that those dairy farmers who have been supplying that plant have bases computed for them according to their deliveries to the plant in the base-forming period.

Bases assigned to producers who supplied a nonpool plant in the base-forming period that became a pool plant

in the following base-paying period should not be transferable. If such a plant did not retain its pool plant status in the base-paying period and its producers had been permitted to transfer their bases, inequities could result. This is because the Class I milk in the pool would then be diminished by the plant's Class I sales in the month the plant lost its pool plant status while the aggregate producer bases for the month would be inflated by the bases that had been assigned its producers. This would have enabled these producers to sell their bases to producers still on the market and for the latter to obtain the benefit of a greater share of the market's Class I sales at the expense of other producers on the market.

The base earned by any producer who supplied the market in the preceding base-forming period should be transferable. This will facilitate the transfer of property when a baseholder dies or when the farm of a baseholder is sold. It will also facilitate adjustments by those producers desiring to expand or contract their operations. However, proper safeguards should be provided so that the transfer provisions may not be exploited at the expense of producers regularly supplying the market.

The amount of a base transferred could be in its entirety or in amounts of not less than 300 pounds. These limits, which were proposed at the hearing, are administratively practicable and should be adequate under conditions in the Carolina market.

The proposed order provisions did not specify that base may be transferred only to another dairy farmer. However, under the base plan provisions adopted herein, only a producer may establish base, and only producer milk could be base milk. Since a base is useful only to producers, only producers should be permitted to hold base. There was no testimony presented at the hearing to indicate an intent that other persons should be permitted to hold base. Accordingly, the order provides, in this regard, that base may be transferred only to a person who is or will be a producer by the end of the month that the transfer is to be effective.

Base transfers would be effective on the first day of the month following the date on which an application for transfer is received by the market administrator. Such application should be on a form approved by the market administrator, signed by the baseholder or the baseholder's heirs and the person to whom the base is to be transferred. If a base is held jointly, the application for transfer should be signed by all joint holders or their heirs. These provisions will insure that there is no misunderstanding between the parties involved concerning transfers.

The base established by a partnership may be divided between partners on any basis agreed on in writing by them if written notification of the agreed upon division, signed by each party, is received by the market administrator prior to the first day of the month in which the division is to be effective. This will facilitate the division of the assets of a partnership that is dissolved during the base-paying period. On the other hand, it will in no way affect the total quantity of base milk in the pool, irrespective of the manner in which the division of the base is made between the partners.

Likewise, two or more individual producers who establish bases separately and decide to form a partnership should be permitted to combine their bases. Although the proposed order would not have provided this, the new order is drafted to accommodate this situation. The combination of individual bases by producers forming a partnership would not affect the quantity of base milk in the pool.

A producer who transferred all or part of such producer's base on or after February 1 should not be permitted to receive other base by transfer that would be applicable within the March-June period of the same year. Further, a producer who receives base by transfer on or after February 1 should not be permitted to transfer a portion of such producer's base to be applicable within the March-June period of the same year, but should be permitted to transfer the entire base. These provisions will tend to insure that the exchange of bases between producers are bona fide transfers. Absent these provisions, the transferring of bases back and forth by two or more producers throughout the base-paying period could result in unwarrantedly increasing their share of the total payments under the order for producer milk at the expense of all of the other producers.

The first base-forming period under the proposed order would be September 1990 through November 1990. Complete data would be available at the end of that period to compute bases. The first application of the base and excess payment provisions would then be for March 1991 deliveries.

Multiple component pricing. A plan for pricing milk on the basis of its nonfat solids and butterfat components should not be adopted on the basis of this record.

Proponents of a multiple component pricing (MCP) plan proposed that the differential value of milk used in Class I and Class II be pooled to determine producers' shares of the higher-valued uses, and the value of nonfat milk solids used in Class II and Class III be pooled with the value of skim milk used in Class I to determine the value of nonfat milk solids in producer milk.

Proponents of an MCP system were the Carolina Jersey Milk Producers Association, Midlands Jersey Milk Producers Association and Sumter Dairies, Inc. The two producer associations consist of 35 dairy farmers. The 15 members of the Carolina Jersey Milk Producers Association ship their milk to Hunter Jersey Farms. The 20 members of the Midlands Jersey Milk Producers Association ship their milk supply to Sumter Dairies.

The Carolina Guernsey Producers Association, while opposed to a Federal milk order for the Carolinas, indicated that it supported MCP in the event a Federal order was made effective. This dairy farmer association consists of 12 members who ship to Carolina Dairy.

Eight of the nine dairy farmer organizations who favored a Federal order for the Carolinas opposed the use of MCP. The eight organizations represent about 84 percent of the milk that is expected to be pooled under the order. Piedmont Milk Sales, a milk marketing organization, also opposed MCP.

Proponents of MCP expended a lot of time and effort in the preparation and presentation of their proposal. They brought in an expert witness from California to testify on the testing procedures used in California to determine the nonfat solids content of milk and on the cost of performing such tests. MCP proponents also brought in a professor from Cornell University to testify on the validity of milk testing methods and procedures. Proponents also brought in an Ohio University professor to rationalize why MCP would be appropriate in a market with a high Class I utilization.

The principal witness for MCP was an economist with 35 years of experience in the field of milk marketing and classified milk pricing programs. The witness testified at length on why he believed that MCP was superior to butterfat and skim milk pricing. He also explained in detail how the proposed pricing procedure would operate at the handler level and the producer level.

Another witness for the MCP procedure was the general manager of National All-Jersey, Inc. The witness indicated that his organization is promoting the nationwide adoption of MCP.

Proponents of MCP contended in their brief that the merits of MCP are well known. They indicated that the merits of such pricing have been recognized and agreed upon by scientists and others in this country and throughout the world.

Proponents' brief listed and countered the objections that are raised to the use of MCP. The objections which they noted and to which they responded were as follows:

(1) MCP is not appropriate in a market with a high Class I use.

(2) MCP will bring about an improper redistribution of money among producers.

(3) The cost of the additional testing if MCP is implemented would be 2 cents per hundredweight.

(4) Handlers' cost for milk in Class II and Class III uses would be increased due to additional testing required.

(5) MCP can serve no useful purpose but only redistributes among dairy farmers whatever money would be there anyway.

The sokesman for the 8 cooperative associations proposing the new order opposed the component pricing procedure for the following reasons:

1. The proposed pricing plan generally referred to as component pricing is not a true component pricing procedure. The pricing plan does not reflect a true market valua for solids-not-fat because their value would be computed by a residual valuation approach.

2. The proposed plan would pay producers a solids-not-fat differential for all the solids-not-fat that producers deliver while charging handlers only for the solids-not-fat differential for milk used in the production of Class II and Class III products.

3. The proposed pricing plan would result in the following costs:

a. Producers would incur the added cost of testing their milk for solids-not-fat; and

b. Keeping records of solids-not-fat tests, posting the tests to producer payrolls, paying producers on the basis of solids-not-fat, auditing and verification by the market administrator would be more costly.

4. Adoption of component pricing would result in lower net returns to producers. The proposed pricing would not generate any new revenues and there would be an added cost of redividing the total returns to producers on the basis of the solids-not-fat in each producer's milk.

5. Marketing conditions in the proposed Carolina marketing area differ in many respects from the marketing conditions that prevailed in the Great Basin marketing area when an MCP plan was adopted for that order.

There was no testimony in support of MCP from handlers. Kraft, Land-O-Sun and Dairy Fresh opposed such pricing. A representative of Milkco and Hunter Jersey Farms indicated these two handlers were not opposed to component pricing but he offered no supporting testimony on their behalf.

Kraft's position seemed to be that if MCP is adopted, the protein content of milk should be the basis of pricing instead of the nonfat solids content of milk. In addition, Kraft's witness emphasized that such payment should be conditioned upon the somatic cell count of the milk. The witness indicated that increased cheese yields from milk containing higher levels of protein are conditioned upon the somatic cell count.

Kraft, Inc., set forth in its brief the following arguments regarding the use of MCP:

(1) Quality factors, such as somatic cell count, must be included in any protein payment schedule.

(2) The pricing adjustments proposed for the Carolina market exceed adjustments paid in the competitive marketplace.

(3) The proposed MCP scheme would result in non-uniform prices to handlers receiving milk for the same use classification.

(4) The proposed MCP scheme would result in non-uniformity and inequity between producers.

(5) The proposal for solids-not-fat pricing would result in undue costs and burdens upon fluid milk handlers.

(6) Conditions in the Carolinas are very different from those relied upon by the Secretary in adopting MCP pricing in the Great Basin market.

Kraft, Inc., also noted that there is virtually no use of MCP by handlers and producers in the Carolinas or elsewhere in the Southeast. With regard to the contention of the proponents of MCP that their proposal would send a signal encouraging more skim and less fat solids in milk, Kraft pointed out that there is a direct correlation between fat and nonfat solids in milk. Kraft also noted that MCP adjustments would apply to only 15 percent of the milk purchased by handlers while all of the producer milk in the market would need to be tested for nonfat solids content. As a consequence of the additional testing, Kraft indicated that the net returns to producers would decline since expenses would be added without any offsetting new revenues.

The proponents and opponents of MCP at the hearing were primarily representatives of dairy farmers. Handlers of milk were somewhat indifferent to whether milk was priced on the basis of skim milk and butterfat or MCP. The operators of primarily fluid milk operations would not be significantly affected even though MCP were adopted. The reason for their indifference is that Class I milk utilized in the plant would continue to be priced on the basis of skim milk and butterfat content. The Class I operators would incur added costs if they elected to purchase and operate new testing equipment to test for multiple components. These plant operators would incur additional costs to hire or train technicians to operate the new equipment.

Plant operators who utilize milk in Class II uses would be the ones who would be primarily impacted by the adoption of MCP. These operators would have to pay on the basis of the butterfat and the nonfat solids content of the milk.

Distributing plants that would be pooled are not utilizing milk in Class III products. Milk that is priced in Class III uses under the order would be milk that is surplus to the fluid milk needs of the market. For the most part, such milk would be milk that is diverted to nonpool plants.

One of the reasons advanced by proponents for using MCP in the Carolina market is that such pricing is a means by which handlers would reimburse producers for the added value of milk with higher solids that is utilized in Class II and Class III uses. However, in this market no more that 15 percent to 20 percent of the producer milk is expected to be used for Class II or Class III purposes. At this level of Class II/Class III utilization, MCP would serve little purpose in compensating producers for higher solids milk. Furthermore, the use of MCP would require additional testing and record keeping at additional expense to handlers and producers while the returns from MCP would be very limited. Moreover, less than five percent of the producers who are expected to deliver their milk to the Carolina market favor MCP. In view of the limited returns that would accrue to producers, the additional record keeping that would be required for handlers, and the lack of support for such nonfat solids and butterfat pricing, it is concluded that MCP should not be adopted in this market at this time.

In lieu of incorporating MCP in the Carolina order, Kraft suggested that the section of the order dealing with butterfat differentials be modified to allow handlers to make equal deductions and additions to the uniform prices due producers on the basis of the protein and somatic cell content of each producer's milk. The suggestion would

not result in the uniformity necessary to assure equitable pricing of milk between handlers and among producers. Such deductions and premiums would be voluntary and their rates could vary between handlers. Furthermore, there is no reason to believe that such a system would be used by all handlers. Accordingly, the proposed modifications should not be adopted.

Exceptions to the Department's failure to include MCP in the regulatory provisions of the order recommended for the Carolinas were submitted by the Commissioner of the South Carolina Department of Agriculture, by the South Carolina Farm Bureau Federation, and by National All-Jersey, Inc. The Jersey association submitted its exceptions on behalf of Carolina Jersey Milk Producers Association, Inc., Midlands Milk Producers Association, and Sumter Dairies, Inc.

The Commissioner of the South Carolina Department of Agriculture indicated in his exceptions that he favored a Federal milk order for the Carolinas but that he opposed the traditional pricing system recommended for the regulatory program. The Commissioner considers the traditional system of pricing outdated because the "most valuable part of the milk, the solids-not-fat portion, is not considered in the payment to the producer."

The South Carolina Farm Bureau Federation indicated that they were "extremely disappointed that the order will not use a multiple component basis for setting prices." In their exceptions, the Federation states that there are two instances in which invalid conclusions are drawn based on testimony given at the hearing. In the first instance, they indicate that the recommended decision states that "eight of the nine dairy farmer organizations who favored a Federal order for the Carolinas opposed the use of MCP. The eight organizations represent about 84 percent of the milk that is expected to be pooled under the order."

The second instance in which the Federation contends an invalid conclusion was drawn refers to a statement in the decision that "* * * less than 5 percent of the producers who are expected to deliver their milk to the Carolina market favor MCP."

The National All-Jersey, Inc., in its exceptions took issue with the Department's conclusion that MCP would "serve little purpose in compensating producers for higher solids" and the three bases cited by the Department in support of that conclusion. The three bases, as summarized in the exceptions, were limited returns that accrue to producers, the additional costs involved and the lack of support for MCP.

The Carolina Federal Order Committee in its exceptions commented that "as at the hearing, the committee continues to oppose the adoption of the proposed multiple component pricing plan." At the hearing the Committee's representative testified "* * * And with the exception of the proponents of proposal No. 4, and that is the Midlands Jersey Milk Producers Association, the organizations I represent cannot support the adoption of the component pricing as it is contained in proposal No. 4. Now, we are not opposing component pricing per se, but find that we cannot support the procedure as contained in proposal No. 4. Now, these organizations that I represent, they do represent approximately 170 million pounds of milk to be pooled under the order, or about 84 percent of that producer milk that we expect will be pooled under the proposed Carolina Federal order."

In view of the limited returns to producers, the additional costs and paperwork burden involved, and the lack of support among dairy farmers for MCP, such pricing should not be adopted in the Carolina order. The exceptions to the Department's failure to adopt MCP in its recommended decision fail to indicate any factors that have not been fully considered earlier, and, accordingly, the exceptions are hereby denied.

(e) *Administrative provisions. Charges on overdue accounts.* Late-payment charges should apply on all funds due the market administrator (sections 71, 76, 77, 85, and 86—Payments to the producer-settlement fund, payments by handlers operating a partially regulated distributing plant, adjustment of accounts, assessment for order administration and deductions for marketing services, respectively) and on payments due to producers and cooperative associations (section 73—Payments to producers and to cooperative associations). The charge for late payments should be one and one-fourth percent for each month or portion thereof that such payment is overdue. The order should also provide that the amounts payable on overdue accounts be computed monthly on each unpaid obligation, which should include any unpaid charges previously computed on such overdue accounts. Any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due should be considered to have been payable by the date it would have been due if the report had been filed when due. Also, all monies collected on overdue accounts should be paid to the administrative fund maintained by the market administrator.

Although the order proponents indicated in their testimony that a late-payment charge should apply to deductions for marketing services, their proposed order language did not include a reference to section 86. The order language adopted herein has been modified by including this section of the order.

The order proponents proposed that unpaid handler obligations to the market administrator and to producers and cooperative associations be increased one and one-fourth percent for each month or portion of a month that such obligation is overdue. The spokesman stated that the intent of the proposal was to encourage prompt payment of handler obligations to the market administrator. He testified that 1.5 percent per month was about the going annual rate for short-term (business) loans at the time of the hearing.

It is essential to the effective operation of the order that handler payments for obligations under the order be made promptly. Under the marketwide pooling arrangement, it is necessary that handlers with Class I utilization higher than the market average pay part of their total use value of milk to the producer-settlement fund. Through this means, money is made available to handlers with lower than average Class I utilization so that all handlers in the market, irrespective of the way they use the milk, can pay their producers the uniform price. The success of this arrangement depends on the solvency of the producer-settlement fund.

Also, the prompt payment of amounts due the administrative and marketing service funds is essential to the performance by the market administrator of the various administrative functions prescribed by the order. Delinquent payments to these funds could impair the ability of the market administrator to carry out his duties in a timely and efficient manner.

Payment delinquency also results in an inequity among handlers. Handlers who pay producers or cooperative associations late are, in effect, borrowing money from producers. In the absence of any late-payment charge that approximates the cost of borrowing money from commercial sources, handlers who are delinquent in their payments have a financial advantage relative to those handlers making timely payments.

It should be noted that late-payment charges are not a substitute for prompt payments by handlers. Those delinquent in their obligations would still be subject to legal enforcement action as authorized under the Act.

Under the provisions adopted herein, overdue handler obligations that are payable to the market administrator would be increased by one and one-fourth percent on the day after the due date. Any remaining unpaid portion of the original obligation would be further increased by one and one-fourth percent on the same date of each succeeding month until the obligation is paid. The late-payment charge would apply not only to the original obligation but also to any unpaid charges previously assessed. Also, the charge should apply whether the obligation is paid 1 day late or 10 days late, and should be applicable to both fully regulated and partially regulated handlers alike.

Late-payment charges on all overdue accounts should accrue to the administrative expense fund maintained by the market administrator. In the event a handler is delinquent in the payment of an obligation, money must be spent by the market administrator in determining the amount of the late-payment charges and in collecting such payments. The money to cover the cost of these activities comes from the administrative assessment fund. Thus, the competitors of the noncomplying handlers who pay assessments to this fund are bearing the administrative costs of dealing with the delinquent handler. Therefore, it is reasonable that late-payment charges assessed on noncomplying handlers be used to help defray the administrative costs.

If the order provided that charges on overdue amounts to producers and cooperatives be paid to the producer-settlement fund in this market where most of the milk received by handlers is from cooperatives, it would tend to reduce the incentive for cooperatives to insist on timely payments from handlers. This would detract from the basic intent of the late-payment charge. More importantly, as previously noted, money must be spent by the market administrator in determining the amount of the late-payment charges and in collecting such payments. The money to cover the cost of these activities comes from the administrative expense fund.

The order provides that a late-payment charge on delinquent report obligations be based on the date that the obligations were due if the report had been filed timely. This proposed provision is contained in several Federal orders and is intended to insure that handlers do not obtain any economic gain by intentionally reporting late.

Marketing services. The new order should provide for furnishing marketing services to producers, such as verifying the tests and weights of producer milk and furnishing market information. These services should be provided by the market administrator, and the cost should be borne by producers for whom the services are rendered. However, any cooperative association, if approved for such activity by the Secretary, may perform such services for its producers in lieu of having the market administrator perform the services.

The order proponents proposed that a marketing services provision be included in the new order and that it be funded by an assessment of 5 cents per hundredweight of production to be paid by the producers for whom the market administrator performs the prescribed services. The spokesman testified that the 5-cent rate should provide adequate funds for the market administrator to provide marketing services to nonmembers, based on an analysis of the expense of such programs in other markets. Also, he noted that the rate provided in an order is a maximum rate that can be reduced by the Secretary if experience shows that the services can be provided for a lesser amount. He stated that a marketing services provision is needed because producers who are not members of a cooperative do not have such a program provided and that such producers would benefit from such services.

The spokesman for the order proponents testified that if a producer is a member of a cooperative association, these services are performed by the cooperative association and are paid for by the members of the cooperative association. The cooperative necessarily performs these services in an effort to assure their members of accurate butterfat tests and weights and reliable market information and other services.

The spokesman said that there is no need for the market administrator to duplicate the services which the cooperative association normally provides for its membership. The market administrator, he said, must rely on the cooperative's results in his auditing program insofar as it is involved with the full accounting of milk and butterfat. He said that it is essential that the performance of cooperative associations with respect to the performance of these marketing services be reviewed by the Secretary. The cooperative association, he said, will be entitled to perform these services only after application to the market administrator, and a demonstration that the cooperative is fully qualified and capable of performing the services.

Milk produced on a handler's own farm should be exempt from marketing service deductions, even though it is subject to other provisions of the order. There are no payments to other persons on such milk. Hence, there is no need to provide the same marketing services as are provided other producers.

The other service provided, that of furnishing market information, is designed to keep the producer informed of developments that might affect such producer's price or market outlet in order that the producer may better evaluate marketing conditions. The objective of the program is to aid producers to achieve and maintain orderly marketing conditions for their milk.

In the case of producers who market their milk through a cooperative association, the Act authorizes such cooperative to perform these marketing services, and the costs of these services normally are borne by such producers through membership dues.

Expense of administration. Each handler should be required to pay the market administrator a proportionate share of the cost of administering the order. For this purpose, a charge of 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, on producer milk (including milk of such handler's own production) and on other source milk allocated to Class I (except milk so assessed under another Federal order) is provided.

The market administrator must have sufficient funds to administer properly the terms of the order. The Act provides that the cost of administration shall be financed through an assessment on handlers. A principal function of the market administrator is to verify the receipts and dispositions of milk from all sources. Equity in sharing the cost of administration of the order among handlers will be achieved, therefore, by applying the administrative assessment on the basis of milk received from dairy farmers (including milk diverted to nonpool plants) and on other source milk allocated to Class I milk.

The proposed order provides that a cooperative shall be the handler on milk it delivers in tank trucks from producers' farms to pool plants of other handlers. The cooperative is the handler on such milk basically for the purpose of making payments to its individual members. For pricing purposes, however, the handlers that receive such milk at their plants would treat it the same as any other direct receipts from producers.

The market administrator must verify by audit the receipts and utilization at each pool plant whether the plant operator buys milk directly from producers or through a cooperative as a bulk tank handler. Thus, the pool plant operator receiving such milk should pay the administrative assessment on it on the same basis as for producer milk received at the plant. The cooperative bulk tank handler would be liable only for the administrative assessment on the quantity of milk picked up at producers' farms that is not received at the pool plant.

The order specifies minimum performance standards that must be met to obtain regulated status. The operator of a plant not meeting such standards (i.e., a partially regulated distributing plant) is required to either (1) make specified payments (discussed elsewhere in this decision) into the producer-settlement fund on route dispositions in the marketing area in excess of offsetting purchases of Federal order Class I milk, or (2) otherwise pay into such fund and/or to dairy farmers an amount not less than the classified use value of all receipts from dairy farmers computed as though such plant were a fully regulated plant.

In administering the order as it applies to partially regulated distributing plants, the market administrator incurs expenses in essentially the same manner as in applying the order to pool handlers, even though the order is not applicable to the partially regulated handler to the same extent as to fully regulated handlers. Hence, payment of the administrative assessment on the partially regulated handler's in-area sales only would reasonably constitute such handler's pro rata share of the administrative expense.

In the case of unregulated milk that enters the market through a regulated plant for Class I use, it is the regulated handler who utilizes the unregulated milk and who must report to the market administrator the receipt and use of such milk. Also, the receipts and utilization of all milk at the regulated handler's plant are subject to verification by the market administrator. Hence, the regulated handler should be responsible for payment of the administrative assessment on such unregulated milk.

The order is designed so that the cost of administration is shared equitably among handlers distributing milk in the proposed marketing area. However, to avoid duplication, an assessment should not be made on other source milk on which an assessment was made under another Federal order.

Provision should be made so that the Secretary may reduce the amount of the administrative assessment without the necessity of amending the order. The rate can thus be reduced when experience indicates a lower rate will be sufficient to provide adequate funds for the administration of the order.

Proponents, in conjunction with their producer-handler definition, proposed that the administrative assessment also apply to all producer-handlers. Proponents contend that it is unfair to other handlers to incur an administrative assessment as a result of costs that are incurred in determining whether certain operations should be qualified as producer-handlers and thus be exempt from the pricing and pooling provisions. Basically, proponents contend that producer-handlers should pay their pro rata share of at least the administrative costs involved in determining and monitoring their exempt status. Proponents contend that handlers should not have to bear such cost since they do not benefit from the producer-handler exemption.

Contrary to proponents' views, handlers do derive a benefit from the administrative expense that they incur. To the extent administrative costs are incurred in administering the producer-handler provisions, handlers are assured that producer-handlers continue to operate in the manner provided under the order. As previously stated, this insures that producer-handlers are not able to transfer the costs and risks of their operation to others and, consequently, are not able to gain a demonstrable advantage relative to producers or handlers. In addition, the producer-handler exemption from the administrative assessment is similar to the exemption of the assessment on other handlers for receipts of other source milk that is allocated to other than Class I use. Such receipts affect the administrative costs and complicate the verification process involved in determining the utilization of producer milk. Therefore, the proposal to apply an administrative assessment to producer-handlers is denied.

General provisions. The Carolina order adopted herein incorporates, by reference, certain terms, definitions, and administrative provisions that are included in part 1000 of the Code of Federal Regulations. These provisions are common to all Federal milk orders, having been so adopted effective July 1, 1971 (36 FR 9844).

The first section (§ 1000.1) states that the uniform provisions included in part 1000 shall be a part of each Federal milk marketing order as if set forth in full in each order, except in any order where any such provision is expressly defined or modified otherwise.

The second section (§ 1000.2) includes definitions of five general terms used in all Federal milk orders: Act, Order, Department, Secretary, and Person.

The third section (§ 1000.3) deals with the designations, powers, and duties of the market administrator.

The fourth section (§ 1000.4) pertains to the continuity and separability of provisions in an individual order. For the most part, these are internal administrative rules and instructions to Department employees regarding procedures involved in the suspension, termination, or liquidation of any or all provisions of a Federal milk order.

The fifth section (§ 1000.5) describes a handler's responsibility with respect to records and facilities.

The final section (§ 1000.6) relates to the termination of obligations.

The general provisions of part 1000 have the same intent and purpose in each Federal milk order. They have worked effectively. Adopting part 1000 by reference for the Carolina order will promote uniform application of these provisions, which have the same intent and purpose in all orders.

A detailed discussion of the need and basis for incorporating the general provisions in each order is contained in a decision issued by the Assistant Secretary on April 15, 1971 (36 FR 7514). Official notice was taken of this decision at the hearing held April 17–25, 1989, for this market. The record evidence indicates that the findings and conclusions of the 1971 decision and the statement of consideration in the related 1980 termination order are equally applicable under current marketing conditions in the proposed Carolina marketing area.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

In his brief, counsel for Kraft renewed his exception to two rulings of the Administrative Law Judge (ALJ). One of the rulings limited counsel's cross-

examination of an expert witness on California's solids-not-fat testing procedures. The second ruling involved counsel's cross-examination of the same expert witness on the storability of milk samples.

In his complaint regarding the first ruling, counsel points out that the expert witness was called by the proponents of MCP "to testify on milk component test procedures used by the California Dairy Industry for the basis of producer payments" and discussed sub-components of SNF in his direct testimony. When counsel for Kraft cross-examined the witness concerning the sub-components of SNF included in California tests, proponent's representative objected that such examination was irrelevant. Counsel indicates that the ALJ sustained the objection and ruled that counsel could not examine the milk testing expert on the technicalities of testing but must limit cross-examination to the cost of testing. Counsel complains this ruling was clearly erroneous, and leaves the record without important information concerning the propriety of SNF testing. Counsel states the witness indicated that the California Dairy Industry is apparently considering moving away from SNF pricing on milk used to make cheese and moving towards casein pricing, which excludes pricing of whey protein and nitrogen gas.

The expert witness read a prepared statement regarding California's milk component pricing and testing that is the basis for payment by dairy processors for milk received from dairy farmers. The prepared statement appears on pages 4 through 9 of the transcript for April 20, 1989. Questions and responses by the expert witness on direct examination cover pages 9–41. Cross-examination of the expert witness by counsel for Kraft covers pages 41–64 and pages 67–85.

The Department's review of the proceeding does not indicate that the ALJ erred in limiting counsel's cross-examination of the expert witness. In the first instance, the ALJ was asked to rule on an objection to the line of cross-examination. The basis offered for the objection was that the expert witness had testified regarding the testing of the total solids (fat and nonfat solids) in milk. The person objecting stated that the make-up of the components of milk was not relevant since the proposed MCP was to be based upon the total solids-not-fat content of the milk.

In reviewing the transcript of the hearing, there is some question whether counsel for Kraft abandoned at the hearing the line of questioning that is in controversy. Counsel states on page 56 and 57 of the transcript of April 20, 1989, "In fact, let me go on to something else and I'll come back to that. I think I have just about finished it." However, counsel does not come back to the line of questioning during the remaining cross-examination of the expert witness.

In any event, the Department finds no fault with the ALJ in limiting cross-examination by counsel on the components of SNF. The expert witness for proponents of MCP was there to testify on testing for SNF in milk and the cost of various testing methods. Consequently, the ALJ appropriately sustained the objection to cross-examination regarding the make-up of the components of solids-not-fat.

With regard to the second exception, counsel for the Department initially objected to the line of questioning by counsel for Kraft stating that it was getting into minutiae about California's testing procedures. The Administrative Law Judge overruled that objection on the basis that the relevancy of the questions was borderline and permitted counsel for Kraft to continue. After additional questions and answers covering 5 to 6 pages in the transcript of the proceeding, the ALJ interjected that counsel for Kraft's line of questioning was really getting into minutiae now and that counsel had covered that (line of questioning) pretty well. Counsel responded, "I'm almost done. I have one more, one more question on that line, your honor, just one more." Counsel was asked by the ALJ to keep his question short. The question by counsel was not especially short and after receiving an answer to the question, counsel then wanted to ask a further question to clarify the answer. At this point the ALJ cut off the line of questioning on the basis that counsel had been allowed to ask his one question.

Counsel for Kraft's objection to the second ruling by the ALJ is without merit. The ruling by the ALJ was in accordance with the condition established by counsel, that he be permitted one more question. Furthermore, there was sufficient basis for the ALJ to have precluded the additional question on the basis that it was not relevant.

In addition, the rulings by the ALJ in limiting counsel's cross-examination did not adversely impact counsel's position that the use of SNF as one of the components in MCP is inappropriate. In that regard, it is noted that the use of MCP is not adopted in this decision.

General Findings

(a) The tentative marketing agreement and the order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(c) The tentative marketing agreement and the order, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held;

(d) All milk and milk products handled by handlers as defined in the tentative marketing agreement and the order are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(e) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1005.85 of the aforesaid tentative marketing agreement and the order.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the order regulating the handling of milk in the Carolina marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents

annexed hereto be published in the Federal Register.

Referendum Order To Determine Producer Approval; Determination of Representative Period; and Designation of Referendum Agent

It is hereby directed that a referendum be conducted and completed on or before the 30th day from the date this decision is issued, in accordance with the procedure for the conduct of referenda (7 CFR 900.300–311), to determine whether the issuance of the attached order regualting the handling of milk in the Carolina marketing area is approved or favored by producers, as defined under the terms of the order who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

The representative period for the conduct of such referendum is hereby determined to be March 1990.

The agent of the Secretary to conduct such referendum is hereby designated to be Eugene E. Krueger.

List of Subjects in 7 CFR Part 1005

Milk marketing orders.

Signed at Washington, DC, on June 15, 1990.

John E. Frydenlund,

Deputy Assistant Secretary, Marketing and Inspection Services.

Order Amending the Order Regulating the Handling of Milk in the Carolina Marketing Area

(This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.)

Findings and Determinations

(a) Findings. Public hearings were held upon a proposed tentative marketing agreement and order regulating the handling of milk in the Carolina marketing area. The hearings were held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held;

(4) All milk and milk products handled by handlers, as defined in the order are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1005.85.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in the Carolina marketing area shall be in conformity to and in compliance with the terms and conditions of the order as follows:

The provisions of the proposed marketing agreement and order contained in the recommended decision issued by the Administrator on March 21, 1990 and published in the Federal Register on March 28, 1990 (55 FR 11505), shall be and are the terms and provisions of this order and are set forth in full herein subject to modifications in §§ 1005.13, 1005.42, 1005.92, and 1005.93.

PART 1005—MILK IN THE CAROLINA MARKETING AREA

Subpart—Order Regulating Handling

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1005.1 General provisions.

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Classification of Milk

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1005.50 Class prices.
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Administrative Assessment and Marketing Service Deduction

1005.85 Assessment for order administration.
1005.86 Deduction for marketing services.

Base-Excess Plan

1005.90 Base milk.
1005.91 Excess milk.
1005.92 Computation of base for each producer.
1005.93 Base rules.
1005.94 Announcement of established bases.

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Subpart—Order Regulating Handling

General Provisions

§ 1005.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

Definitions

§ 1005.2 Carolina marketing area.

The "Carolina marketing area", hereinafter called the "marketing area", means all the territory within the boundaries of the following counties, including all piers, docks and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed counties (in the event such provision conflicts with a similar provision of an adjacent Federal milk order, the provisions of the adjacent Federal order shall have precedence.):

(a) *Northwestern Zone:*

North Carolina counties of Alexander, Alleghany, Ashe, Avery, Buncombe, Burke, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, McDowell, Macon, Madison, Mitchell, Rockingham, Stokes, Surry, Swain, Transylvania, Watauga, Wilkes, Yadkin, and Yancey.

(b) *Base Zone:*

North Carolina counties of Alamance, Anson, Cabarrus, Caswell, Catawba, Chatham, Cleveland, Davidson, Davie, Durham, Forsyth, Franklin, Gaston, Granville, Guilford, Halifax, Iredell, Lee, Lincoln, Mecklenberg, Montgomery, Moore, Nash, Northampton, Orange, Person, Polk, Randolph, Richmond, Rowan, Rutherford, Stanly, Union, Vance, Wake, and Warren.

South Carolina counties of Abbeville, Anderson, Cherokee, Chester, Greenville, Greenwood, Lancaster, Laurens, McCormick, Oconee, Pickens, Spartanburg, Union, and York.

(c) *Southeastern Zone:*

North Carolina counties of Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Edgecombe, Gates, Greene, Harnett, Hertford, Hoke, Hyde, Johnston, Jones, Lenoir, Martin, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Robeson, Sampson, Scotland, Tyrrell, Washington, Wayne, and Wilson.

South Carolina counties of Aiken, Allendale, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Chesterfield, Clarendon, Colleton, Darlington, Dillon, Dorchester, Edgefield, Fairfield, Florence, Georgetown, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Marlboro, Newberry, Orangeburg, Richland, Saluda, Sumter, and Williamsburg.

§ 1005.3 Route disposition.

Route disposition means a delivery to a retail or wholesale outlet (except to a plant) either directly or through any distribution facility (including disposition from a plant store, vendor or vending machine) of a fluid milk product classified as Class I milk.

§ 1005.4 Plant.

Plant means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products, including filled milk, are received, processed, or packaged. Separate facilities without stationary storage tanks that are used only as a reload point for transferring bulk milk from one tank truck to another or separate facilities used only as a distribution point for storing packaged fluid milk products in transit for route disposition shall not be a plant under this definition.

§ 1005.5 Distributing plant.

Distributing plant means a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk and at which fluid milk products are processed or packaged and from which there is route disposition in the marketing area during the month.

§ 1005.6 Supply plant.

Supply plant means a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk and from which fluid milk products are transferred during the month to a pool distributing plant.

§ 1005.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A plant that is approved by a duly constituted regulatory agency for the processing or packaging of Grade A milk and from which during the month is:

(1) Route disposition, except filled milk, in the marketing area not less than 15 percent of its total route disposition, except filled milk, during the month; and

(2) The total quantity of fluid milk products, except filled milk, disposed of in Class I is not less than 60 percent in each of the months of August through November and January and February, and 40 percent in each of the other months, of the total quantity of fluid milk products, except filled milk, physically received at such plant or diverted therefrom pursuant to § 1005.13. The applicable percentage in this subparagraph may be increased or decreased up to 10 percentage points by the Director of the Dairy Division if that person finds such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the Director shall investigate the need for revision either at the Director's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that the revision is being considered and invite data, views, and arguments.

(b) A plant, other than a plant described in paragraph (a) of this section, from which fluid milk products, except filled milk, are shipped to pool plants pursuant to paragraph (a) of this section. Such shipments must equal not less than 60 percent in each of the months of August through November and January and February, and 40 percent in each of the other months, of the total quantity of milk approved by a duly constituted regulatory agency for fluid consumption that is received during the month from dairy farmers (including producer milk diverted from the plant pursuant to § 1005.13 but excluding milk diverted to such plant) and handlers described in § 1005.9(c). The operator of such plant may include milk diverted from such plant to plants described in paragraph (a) of this section as qualifying shipments in meeting up to one-half of the required shipments. The applicable shipping percentage of this paragraph may be increased or decreased up to 10 percentage points by the Director of the Dairy Division if the Director finds such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding, the Director shall investigate the need for revision either at the Director's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that the revision is being considered and invite data, views, and arguments.

(c) A plant located in the State of North Carolina, South Carolina or Virginia that is operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and during the month 60 percent or more of the producer milk of members of such cooperative association, excluding such milk that is received at or diverted from pool plants described in paragraph (b) of this section but including milk delivered by such cooperative as a handler described in § 1005.9(c), is delivered directly from their farms to pool plants described in paragraph (a) of this section or is transferred to such plants as a bulk fluid

milk product from the plant of the cooperative association, subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a) or (b) of this section or under the provisions of another Federal order applicable to a distributing plant or a supply plant; and

(2) The plant is approved by a duly constituted regulatory agency to handle milk for fluid consumption.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A governmental agency plant;

(3) A plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area; and

(4) A plant qualified pursuant to paragraph (b) of this section which also meets the pooling requirements for the month under another Federal order.

§ 1005.8 Nonpool plant.

Nonpool plant means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) *Other order plant* means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) *Producer-handler plant* means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) *Partially regulated distributing plant* means a nonpool plant that is not a producer-handler plant, a governmental agency plant or an other order plant and from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) *Unregulated supply plant* means a nonpool plant that is not a producer-handler plant, a governmental agency plant or an other order plant and from which fluid milk products are shipped to a pool plant.

(e) *Governmental agency plant* means a plant operated by a governmental agency from which fluid milk products are distributed in the marketing area. Such plant shall be exempt from all provisions of this part.

§ 1005.9 Handler.

Handler means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) Any cooperative association with respect to milk of such producers diverted to nonpool plants for the account of such association pursuant to § 1005.13, excluding the milk of producers diverted by the association as a handler pursuant to paragraph (a) of this section;

(c) Any cooperative association with respect to milk excluding the milk of producers diverted to pool plants by the association as a handler pursuant to paragraph (a) of this section, that it receives for its account from the farm of a producer for delivery to a pool plant or another handler, in a tank truck owned and operated by, or under the control of, such cooperative association, unless both the cooperative association and the operator of the pool plant notify the market administrator prior to the time that such milk is delivered to the pool plant that the plant operator will be the handler of such milk and will purchase such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples. Milk for which the cooperative association is the handler pursuant to this paragraph shall be deemed to have been received by the cooperative association at the location of the pool plant to which such milk is delivered;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler;

(f) Any person who operates an other order plant described in § 1005.7(d) (3) or (4); and

(g) Any person who operates an unregulated supply plant.

§ 1005.10 Producer-handler.

Producer-handler means any person:

(a) Who operates a dairy farm and a processing plant from which there is route disposition in the marketing area;

(b) Who receives no fluid milk products from sources other than his own farm production, pool plants and other order plants;

(c) Whose receipts of fluid milk products from pool plants and other order plants do not exceed the lesser of 5 percent of Class I disposition or 5,000 pounds during the month;

(d) Who disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products received from his own farm production or pool plants; and

(e) Who provides proof satisfactory to the market administrator that the care and management of the dairy farm and other resources necessary for his own farm production of milk and the management and operation of the processing plant are the personal enterprise and risk of such person.

§ 1005.11 [Reserved]

§ 1005.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption, which milk is:

(1) Received at a pool plant directly from such person;

(2) Received by a handler described in § 1005.9(c); or

(3) Diverted from a pool plant in accordance with § 1005.13.

(b) "Producer" shall not include:

(1) A producer-handler as described in any order (including this part) issued pursuant to the Act;

(2) A governmental agency operating a plant exempt pursuant to § 1005.8(e);

(3) Any person with respect to milk produced by such person which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1005.44(a)(8)(iii) and the corresponding step of § 1005.44(b); and

(4) Any person with respect to milk produced by such person which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1005.13 Producer milk.

Producer milk means the skim milk and butterfat contained in milk of a producer that is:

(a) Received at a pool plant directly from such producer by the operator of the plant, excluding such milk that is diverted from another pool plant;

(b) Received by a handler described in § 1005.9(c);

(c) Diverted from a pool plant for the account of the handler operating such plant to another pool plant;

(d) Diverted from a pool plant to a nonpool plant (other than a producer-handler plant) for the account of the handler described in § 1005.9 (a) or (b) subject to the following conditions:

(1) A producer's milk shall be eligible for diversion to a nonpool plant during any month in which such producer's milk is physically received at a pool plant as follows:

(i) In any month of July through February, six days' production;

(ii) In any month of March through June, two days' production.

(2) During each of the months of July through November and January and February, the total quantity of milk

diverted by a cooperative association shall not exceed one-fourth of the producer milk that such cooperative caused that month to be delivered to or diverted from such pool plants;

(3) A handler described in § 1005.9(a) that is not a cooperative association may divert for its account any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d)(2) of this section. The total quantity of milk so diverted shall not exceed one-fourth of the milk that is physically received at or diverted from pool plants as producer milk of such handler in each month of July through November and January and February;

(4) Any milk diverted in excess of the limits prescribed in paragraphs (d)(2) and (d)(3) of this section shall not be producer milk. The diverting handler shall designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to make such designation, no milk diverted by such handler pursuant to this paragraph shall be producer milk;

(5) To the extent that it would result in nonpool status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be producer milk;

(6) The cooperative association shall designate the dairy farmer deliveries that are not producer milk pursuant to paragraph (d)(5) of this section. If the diverting handler fails to make such designation, no milk diverted by such handler shall be producer milk; and

(e) Milk diverted pursuant to paragraph (c) or (d) of this section shall be priced at the location of the plant to which diverted.

§ 1005.14 Other source milk.

Other source milk means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1005.40(b)(1) from any source other than producers, handlers described in § 1005.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1005.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1005.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1005.40(b)(1)) for which the handler fails to establish a disposition.

§ 1005.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1005.16 Fluid cream product.

Fluid cream product means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1005.17 Filled milk.

Filled milk means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1005.18 Cooperative association.

Cooperative association means any cooperative marketing association of producers which the Secretary determines after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have and be exercising full authority in the sale of milk of its members.

§ 1005.19 [Reserved]

§ 1005.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1005.52:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following workday until the next price is reported. A workday is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following workday until the next price is reported. A workday is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the

day that such prices are reported and for each preceding workday until the day such prices were previously reported. A workday is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding workday until the day such price was previously reported. A workday is each Monday through Friday except national holidays.

Handler Reports

§ 1005.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of its pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1005.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1005.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1005.9(b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to its receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1005.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1005.9(a), (b), and (c) shall report to the market administrator its producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) Such producer's name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1005.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1005.32 Other reports.

(a) Each handler described in § 1005.9(a), (b) and (c) shall report to the market administrator on or before the 7th day after the end of each month of March through June the aggregate quantity of base milk received from producers during the month, and on or before the 20th day after the end of each month of March through June the pounds of base milk received from each producer during the month.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1005.30 and 1005.31, each handler shall report such other information as the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1005.40 Classes of utilization.

Except as provided in § 1005.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1005.30 shall be classified as follows:

(a) Class I milk. Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) Class II milk. Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) Class III milk. Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section.

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1005.15; and

(6) In shrinkage assigned pursuant to § 1005.41(a) to the receipts specified in § 1005.41(a)(2) and in shrinkage specified in § 1005.41 (b) and (c).

§ 1005.41 Shrinkage.

For the purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1005.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b)(1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraphs (b)(1) through (b)(6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product.

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1005.9(c), and in milk diverted to such plant from another pool plant, except that in either case, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraphs (b)(1), (b)(2), (b)(4), (b)(5), and (b)(6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1005.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1005.42 Classification of transfers and diversions.

(a) Transfers and diversions to pool plants. Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1005.44(a)(12) and the corresponding step of § 1005.44(b);

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1005.44(a)(7) or the corresponding step of § 1005.44(b), the skim milk or butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler or divertor-handler received during the month other source milk to be allocated pursuant to § 1005.44(a) (11) or (12) or the corresponding steps of § 1005.44(b), the skim milk or butterfat so transferred or diverted, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant or divertee-plant.

(b) Transfers and diversions to other order plants. Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraphs (b)(1), (b)(2), or (b)(3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be

classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to the class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1005.40.

(c) Transfers to producer-handlers and transfers and diversions to governmental agency plants. Skim milk or butterfat in the following forms that is transferred from a pool plant to a producer-handler under this or any other Federal order or transferred or diverted from a pool plant to a governmental agency plant shall be classified:

(1) As Class I milk, if so moved in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) Transfers and diversions to other nonpool plants. Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant, or a governmental agency plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i) (A) and (B) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d)(2)(ii) through (d)(2)(viii) of this section:

(A) The transferor-handler or divertor-handler claims such classification in such handler's report of receipts and utilization filed pursuant to § 1005.30 for the month within which such transaction occurred; and

(B) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(A) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(B) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(C) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(D) Pro rata to any remaining unassigned receipts of bulk fluid milk products to such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(A) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(B) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(A) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(B) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

(e) Transfers by a handler described in § 1005.9(c) to pool plants. Skim milk and butterfat transferred in the form of bulk milk by a handler described in § 1005.9(c) to another handler's pool plant shall be classified pursuant to § 1005.44 pro rata with producer milk received at the transferee-handler's plant.

§ 1005.43 General classification rules.

In determining the classification of producer milk pursuant to § 1005.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1005.30 and shall compute separately for each pool plant, and for each cooperative association with respect to milk for which it is the handler pursuant to § 1005.9(b) or (c) that was not received at a pool plant, the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1005.40, 1005.41,

and 1005.42. The combined pounds of skim milk and butterfat so determined in each class for a handler described in § 1005.9(b) or (c) shall be such handler's classification of producer milk;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk of a handler pursuant to § 1005.9(b) or (c) shall be determined separately from the operations of any pool plant operated by such handler.

§ 1005.44 Classification of producer milk.

For each month the market administrator shall determine for each handler described in § 1005.9(a) for each pool plant of the handler separately the classification of producer milk and milk received from a handler described in § 1005.9(c), by allocating the handler's receipts of skim milk and butterfat to the utilization of such receipts by such handler as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1005.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1005.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1005.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1005.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1005.40(b)(1) that were not subtracted pursuant to paragraphs (a)(4), (a)(5), and (a)(6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order and from a governmental agency plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2) and (a)(7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (a)(7)(v), and (a)(8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(8)(ii) (A) through (C) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(A) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(B) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1005.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(C) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1005.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(5) and (a)(7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraphs (a)(1) of this section;

(11) Subject to the provisions of paragraphs (a)(11)(i) and (a)(11)(ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (a)(7)(v), and (a)(8)(i) and (a)(8)(ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraphs (a)(7)(vi) and (a)(8)(iii) of this section:

(i) Subject to the provisions of paragraphs (a)(12)(ii), (a)(12)(iii), and (a)(12)(iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(A) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1005.45(a); or

(B) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (a)(12)(ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (a)(12)(ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1005.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk and milk received from a handler described in § 1005.9(c), subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk and milk received from a handler described in § 1005.9(c) in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1005.45 Market Administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order

plants pursuant to § 1005.44(a)(12) and the corresponding step of § 1005.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1005.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests, the percentage of producer milk delivered by members of such association that was used in each class by each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

Class Prices

§ 1005.50 Class prices.

Subject to the provisions of § 1005.53, the class prices for the month per hundredweight of milk shall be as follows:

(a) Class I price. The Class I price shall be the basic formula price for the second preceding month plus $3.08.

(b) Class II price. The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1005.52 for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1005.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1005.52.

(c) Class III price. The Class III price shall be the basic formula price for the month.

§ 1005.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1005.52 Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1005.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1005.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month, and separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (c)(1) and (c)(2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the National Agricultural Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the National Agricultural Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

§ 1005.53 Plant location adjustments for handlers.

(a) For milk received at a plant from producers or a handler described in § 1005.9(c) which is classified as Class I

milk subject to the limitations pursuant to paragraph (b) of this section, the Class I price specified in § 1005.50(a) shall be adjusted by the amount stated in paragraphs (a)(1) through (a)(6) of this section for the location of such plant:

(1) For a plant located within one of the zones set forth in § 1005.2, the adjustment shall be as follows:

	Adjustment per hundredweight
Northwestern	Minus 15 cents.
Base	No adjustment.
Southeastern	Plus 15 cents.

(2) For a plant located within the Tennessee Valley Federal order marketing area (part 1011), except Kentucky and West Virginia counties, the adjustment shall be a minus 31 cents;

(3) For a plant located within the State of Florida, the adjustment shall be a plus 50 cents;

(4) For a plant located outside the areas specified in paragraph (a)(1), (a)(2), and (a)(3) of this section and south of a line extending through the southern boundary of the State of Tennessee and east of the Mississippi River, the adjustment shall be the adjustment applicable at Anderson, North Augusta, or Hardeeville, South Carolina, whichever city is nearest;

(5) For a plant located outside the area specified in paragraph (a)(2) of this section and in the State of Virginia, the adjustment shall be the adjustment applicable at Reidsville, Roanoke Rapids, or Elizabeth City, North Carolina, whichever city is nearest;

(6) For a plant located outside the areas specified in paragraphs (a)(1), (a)(2), (a)(3), (a)(4), and (a)(5) of this section, the adjustment shall be a minus 2.5 cents for each 10 miles or fraction thereof (by the shortest hard-surfaced highway distance as determined by the market administrator) that such plant is from the nearer of the city halls in Greenville, South Carolina or Charlotte or Greensboro, North Carolina.

(b) For fluid milk products transferred in bulk from a pool plant to a pool distributing plant at which a higher Class I price applies and which are classified as Class I milk, the Class I price shall be the Class I price applicable at the location of the transferor-plant subject to a location adjustment credit for the transferor-plant which shall be determined by the market administrator for skim milk and butterfat, respectively, as follows:

(1) Subtract from the pounds of skim milk remaining in Class I at the transferee-plant after the computations pursuant to § 1005.44(a)(12) an amount equal to:

(i) The pounds of skim milk in receipts of milk at the transferee-plant from producers and handlers described in § 1005.9(c); and

(ii) The pounds of skim milk in receipts of packaged fluid milk products from other pool plants.

(2) Assign any remaining pounds of skim milk in Class I at the transferee-plant to the skim milk in receipts of bulk fluid milk products from other pool plants, first to the transferor-plant at which the highest Class I price applies and then to other plants in sequence beginning with the plant at which the next highest Class I price applies;

(3) Compute the total amount of location adjustment credits to be assigned to transferor-plants by multiplying the hundredweight of skim milk assigned pursuant to paragraph (b)(2) of this section to each transferor-plant at which the Class I price is lower than the Class I price at the transferee-plant by the difference in the Class I prices applicable at the transferor-plant and transferee-plant, and add the resulting amounts;

(4) Assign the total amount of location adjustment credits computed pursuant to paragraph (b)(3) of this section to those transferor-plants that transferred fluid milk products containing skim milk classified as Class I milk pursuant to § 1005.42(a) and at which the applicable Class I price is less than the Class I price at the transferee-plant, in sequence beginning with the plant at which the highest Class I price applies. Subject to the availability of such credits, the credit assigned to each plant shall be equal to the hundredweight of such Class I skim milk multiplied by the applicable location adjustment rate for such plant. If the aggregate of this computation for all plants having the same location adjustment rate exceeds the credits that are available to those plants, such credits shall be prorated to the volume of skim milk in Class I transfers from such plants; and

(5) Location adjustment credit for butterfat shall be determined in accordance with the procedure outlined for skim milk in paragraphs (b)(1) through (4) of this section.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1005.54 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1093.50(b).

§ 1005.55 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

Uniform Price

§ 1005.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk for each handler described in § 1005.9(a) with respect to each of its pool plants and for each handler described in § 1005.9 (b) and (c) with respect to milk that was not received at a pool plant as follows:

(a) Multiply the pounds of producer milk and milk received from a handler described in § 1005.9(c) that were classified in each class pursuant to §§ 1005.43(a) and 1005.44(c) by the applicable class prices, and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1005.44(a)(14) and the corresponding step of § 1005.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1005.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1005.44(a)(9) and the corresponding step of § 1005.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1005.44 (a)(7)(i) through (a)(7)(iv) and the corresponding step of § 1005.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1005.44 (a)(7)(v) and (a)(7)(vi) and the corresponding step of § 1005.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1005.44(a)(11) and the corresponding step of § 1005.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1005.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).

(a) The market administrator shall compute the weighted average price for each month and the uniform price for each month of July through February per hundredweight for milk of 3.5 percent butterfat content as follows:

(1) Combine into one total the values computed pursuant to § 1005.60 for all handlers who filed the reports prescribed in § 1005.30 for the month and who made the payments pursuant to § 1005.71 for the preceding month;

(2) Add one-half the unobligated balance in the producer-settlement fund;

(3) Add an amount equal to the total value of the minus adjustments and subtract an amount equal to the total value of the plus adjustments computed pursuant to § 1005.75;

(4) Divide the resulting amount by the sum of the following for all handlers included in these computations;

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1005.60(f); and

(5) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The resulting figure, rounded to the nearest cent, shall be the weighted average price for each month and the uniform price for the months of July through February.

(b) For each month of March through June, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk, each of 3.5 percent butterfat content, as follows:

(1) Compute the total value of excess milk for all handlers included in the computations pursuant to paragraph (a)(1) of this section as follows:

(i) Multiply the hundredweight quantity of excess milk that does not exceed the total quantity of such handlers' producer milk assigned to Class III milk by the Class III price;

(ii) Multiply the remaining hundredweight quantity of excess milk that does not exceed the total quantity of such handlers' producer milk assigned to Class II milk by the Class II price;

(iii) Multiply the remaining hundredweight quantity of excess milk by the Class I price; and

(iv) Add together the resulting amounts;

(2) Divide the total value of excess milk obtained in paragraph (b)(1) of this section by the total hundredweight of such milk and adjust to the nearest cent. The resulting figure shall be the uniform price for excess milk;

(3) From the amount resulting from the computations pursuant to paragraphs (a)(1) through (a)(3) of this section subtract an amount computed by multiplying the hundredweight of milk specified in paragraph (a)(4)(ii) of this section by the weighted average price;

(4) Subtract the total value of excess milk determined by multiplying the uniform price obtained in paragraph (b)(2) of this section times the hundredweight of excess milk from the amount computed pursuant to paragraph (b)(3) of this section;

(5) Divide the amount calculated pursuant to paragraph (b)(4) of this section by the total hundredweight of base milk included in these computations; and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(5) of this section. The resulting figure, rounded to the nearest cent, shall be the uniform price for base milk.

§ 1005.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 11th day after the end of each month the applicable uniform price(s) pursuant to § 1005.61 for such month.

Payments for Milk

§ 1005.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1005.71, 1005.76, and 1005.77, and out of which he shall make all payments pursuant to §§ 1005.72 and 1005.77: *Provided, That* any payments due any handler shall be offset by any payments due from such handler.

§ 1005.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1005.60.

(2) The sum of:

(i) The value at the uniform price(s), as adjusted pursuant to § 1005.75, of such handler's receipts of producer milk and milk received from handlers pursuant to § 1005.9(c); and

(ii) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1005.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1005.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month, the market

administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1005.71(a)(2) exceeds the amount computed pursuant to § 1005.71(a)(1). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1005.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) On or before the last day of each month, for milk received during the first 15 days of the month from such producer who has not discontinued delivery of milk to such handler before the 25th day of the month at not less than the Class III price for the preceding month or 90 percent of the weighted average price for the preceding month, whichever is higher, less proper deductions authorized in writing by the producer; and

(2) On or before the 15th day of the following month, an amount equal to not less than the uniform price(s), as adjusted pursuant to §§ 1005.74 and 1005.75, multiplied by the hundredweight of milk or base milk and excess milk received from such producer during the month, subject to the following adjustments:

(i) Less payments made to such producer pursuant to paragraph (a)(1) of this section;

(ii) Less deductions for marketing services made pursuant to § 1005.86;

(iii) Plus or minus adjustments for errors made in previous payments made to such producers; and

(iv) Less proper deductions authorized in writing by such producer: *Provided, That* if by such date such handler has not received full payment from the market administrator pursuant to § 1005.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to the paragraph next following after the receipt of the balance due from the market administrator;

(b) Each handler shall make payment to the cooperative association for producer milk which it caused to be delivered to such handler, if such cooperative association is authorized to collect such payments for its members and exercises such authority, an amount equal to the sum of the individual payments otherwise payable for such producer milk as follows:

(1) On or before two days prior to the last day of each month for producer milk received during the first 15 days of the month; and

(2) On or before the 13th day after the end of each month for milk received during such month.

(c) Each handler pursuant to § 1005.9(a) who receives milk from a cooperative association as a handler pursuant to § 1005.9(c), including the milk of producers who are not members of such association, and who the market administrator determines have authorized such cooperative association to collect payment for their milk, shall pay such cooperative for such milk as follows:

(1) On or before two days prior to the last day of the month for milk received during the first 15 days of the month, not less than the Class III price for the preceding month or 90 percent of the weighted average price for the preceding month, whichever is higher; and

(2) On or before the 13th day of the following month for milk received during the month, not less than the appropriate uniform price(s) as adjusted pursuant to §§ 1005.74 and 1005.75, and less any payments made pursuant to paragraph (c)(1) of this section.

(d) In making payments for producer milk pursuant to this section, each handler shall furnish each producer or cooperative association from whom he has received milk a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The month and identity of the producer;

(2) The daily and total pounds and the average butterfat content of producer milk;

(3) For the months of March through June the total pounds of base milk received from the producer;

(4) The minimum rate(s) at which payment to the producer is required pursuant to this order;

(5) The rate(s) used in making the payment if such rate(s) is other than the applicable minimum rate(s);

(6) The amount, or the rate per hundredweight, and nature of each deduction claimed by the handler; and

(7) The net amount of payment to such producer or cooperative association.

§ 1005.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price(s) shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1005.75 Plant location adjustments for producers and on nonpool milk.

(a) In making the payments required pursuant to § 1005.73, the uniform price and the uniform price for base milk pursuant to § 1005.61 for the month shall be adjusted by the amounts set forth in § 1005.53 according to the location of the plant where the milk being priced was received.

(b) For purposes of computing the value of other source milk pursuant to § 1005.71, the weighted average price shall be adjusted by the amount set forth in § 1005.53 that is applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price shall not be less than the Class III price.

§ 1005.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1005.30(b) and 1005.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants, handlers pursuant to § 1005.9(b), and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and weighted average price shall not be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1005.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant, a handler described in § 1005.9(b), or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant or as classified pursuant to § 1005.42 with respect to receipts from a handler described in § 1005.9(b);

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1005.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1005.60 for such handler shall include, in lieu of the value of other source milk specified in § 1005.60(f) less the value of such other source milk specified in § 1005.71(a)(2)(ii), a value of milk determined pursuant to § 1005.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1005.7(b) subject to the following conditions:

(A) The operator of the partially regulated distributing plant submits with its reports filed pursuant to §§ 1005.30(b) and 1005.31(b) similar reports for each such nonpool supply plant;

(B) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(C) The value of milk determined pursuant to § 1005.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1005.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1005.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1005.77 Adjustment of accounts.

Whenever verification by the market administrator of payments by any handler discloses errors made in payments to the producer-settlement fund pursuant to § 1005.71, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler, pursuant to § 1005.72, the market administrator shall, within 15 days, make such payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer or cooperative association for milk received by such handler discloses payment of less than is required by § 1005.73, the handler shall pay such balance due such producer or cooperative association not later than the time of making payment to producers or cooperative associations next following such disclosure.

§ 1005.78 Charges on overdue accounts.

Any unpaid obligations of a handler pursuant to §§ 1005.71, 1005.73, 1005.76, 1005.77, 1005.85 or 1005.86 shall be increased one and one-fourth percent per month beginning on the first day after the due date, and on each date of subsequent months following the day on which such type of obligation is normally due, subject to the following conditions:

(a) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid interest charges previously computed pursuant to this section;

(b) For the purposes of this section, any obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due; and

(c) All monies collected pursuant to this section shall be paid to the administrative assessment fund maintained by the market administrator.

Administrative Assessment and Marketing Service Deduction

§ 1005.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day

after the end of the month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe with respect to:

(a) Receipts of producer milk (including such handler's own production) other than such receipts by a handler described in § 1005.9(c) that were delivered to pool plants of other handlers;

(b) Receipts from a handler described in § 1005.9(c);

(c) Other source milk allocated to Class I pursuant to § 1005.44(a)(7) and (a)(11) and the corresponding steps of § 1005.44(b), except such other source milk that is excluded from the computations pursuant to § 1005.60 (d) and (f); and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat specified in § 1005.76(a)(2).

§ 1005.86 Deduction for marketing services.

(a) Except as provided in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of such handler's own production) pursuant to § 1005.73, shall deduct 5 cents per hundredweight, or such amount not exceeding 5 cents per hundredweight, as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association.

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall (in lieu of the deduction specified in paragraph (a) of this section), make such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 13th day after the end of each month, pay such deductions to the cooperative association of which such producers are members, furnishing a statement showing the amount of any such deductions and the amount of milk for which such deduction was computed for each producer.

Base-Excess Plan

§ 1005.90 Base milk.

"Base milk" means the producer milk of a producer in each month of March through June that is not in excess of the producer's base multiplied by the number of days in the month.

§ 1005.91 Excess milk.

"Excess milk" means the producer milk of a producer in each month of March through June in excess of the producer's base milk for the month, and shall include all the producer milk in such months of a producer who has no base.

§ 1005.92 Computation of base for each producer.

(a) Subject to § 1005.93, the base for each producer shall be an amount obtained by dividing the total pounds of producer milk delivered by such producer during the immediately preceding months of September through November by the number of days' production represented by such producer milk or by 77, whichever is more.

(b) The base for a producer whose milk was delivered to a nonpool plant that became a pool plant after the beginning of the base-forming period (September-November) shall be calculated as if the plant were a pool plant for the entire base-forming period. A base thus assigned shall not be transferable.

§ 1005.93 Base rules.

(a) Except as provided in § 1005.92(b) and in paragraph (b) of this section, a base may be transferred in its entirety or in amounts of not less than 300 pounds effective on the first day of the month following the date on which an application for such transfer is received by the market administrator. Base may be transferred only to a person who is or will be a producer by the end of the month that the transfer is to be effective. Such application shall be on a form approved by the market administrator and signed by the baseholder or the legal representative of the baseholder's estate and the person to whom the base is to be transferred. If a base is held jointly, the application shall be signed by all joint holders or the legal representative of the estate of any deceased baseholder.

(b) A producer who transferred base on or after February 1 may not receive by transfer additional base that would be applicable during March through June of the same year. A producer who received base by transfer on or after February 1 may not transfer a portion of the base to be applicable during March through June of the same year, but may transfer the entire base.

(c) The base established by a partnership may be divided between the partners on any basis agreed to in writing by them if written notification of the agreed-upon division of base signed by each partner is received by the market administrator prior to the first day of the month in which such division is to be effective.

(d) Two or more producers in a partnership may combine their separately established bases by giving notice to the market administrator prior to the first day of the month in which such combination of bases is to be effective.

(e) The base assigned a person who was a producer during any of the immediately preceding months of September through November may be increased to 90 percent of such producer's average daily producer milk deliveries in the month immediately preceding the month during which a condition described in paragraphs (e)(1), (e)(2), or (e)(3) of this section occurred, providing such producer submitted to the market administrator in writing on or before March 1 a statement that established to the satisfaction of the market administrator that in the immediately preceding September through November base-forming period the amount of milk produced on such producer's farm was substantially reduced because of conditions beyond the control of such person, which resulted from:

(1) The loss by fire or windstorm of a farm building used in the production of milk on the producer's farm;

(2) Brucellosis, bovine tuberculosis or other infectious diseases in the producer's milking herd as certified by a licensed veterinarian; or

(3) A quarantine by a Federal or State authority that prevents the dairy farmer from supplying milk from the farm of such producer to a plant.

§ 1005.94 Announcement of established bases.

On or before February 1 of each year, the market administrator shall calculate a base for each person who was a producer during any of the immediately preceding months of September through November and shall notify each producer and the handler receiving milk from such dairy farmer of the base established by the producer. If requested by a cooperative association, the market administrator shall notify the cooperative association of each producer-member's base.

Marketing Agreement Regulating the Handling of Milk in the Carolina Marketing Area

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1005.1 to 1005.94, all inclusive, of the order regulating the handling of milk in the Carolina marketing area (7 CFR part 1005) which is annexed hereto; and

II. The following provisions:

Section 1005.95 Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he handled during the month of March 1990, hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

Section 1005.96 Effective date.

This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with § 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

(Signature)

BY _____

(Name) (Title)

(Address)

(Seal)

Attest

Date

[FR Doc. 90-14379 Filed 6-21-90; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1250

[Docket No. PY-90-004]

Referendum on Amendment to Egg Research and Promotion Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of referendum.

SUMMARY: Notice is hereby given that the Agricultural Marketing Service will conduct a referendum to determine whether egg producers favor elimination of the refund provision from the Egg Research and Promotion Order, as amended. Ballots and instructions will be mailed directly to all known egg producers owning over 30,000 laying hens.

DATES: The representative period for purposes of the referendum is January 1 through March 31, 1990. The referendum will be conducted between July 16 and August 10, 1990.

FOR FURTHER INFORMATION CONTACT: Janice L. Lockard, Chief, Standardization Branch, Poultry Division, AMS, USDA, 202-447-3506.

SUPPLEMENTARY INFORMATION: The Egg Research and Consumer Information Act (7 U.S.C. 2701 et seq.) was amended October 31, 1988 (Pub. Law 100-575). The amendments required the Secretary to amend the Egg Research and Promotion Order to eliminate the producer refund provision. This change is subject to a producer referendum after the end of the 18-month period following issuance of the amended order.

An interim final rule removing the refund provision from the order (7 CFR 1250.349) was published in the **Federal Register** on January 4, 1989 (54 FR 98), with an effective date of January 1, 1989. Comments were solicited from interested persons through February 3, 1989. One comment in support of the interim final rule was received. The interim final rule was adopted without change on March 21, 1989 (54 FR 11492). In accordance with the procedures for the conduct of referenda (7 CFR 1250.200 et seq.), a referendum will be conducted beginning July 16, 1990, and ending on August 10, 1990, to determine whether producers favor elimination of the refund provision from 7 CFR 1250.349.

Section 9 of the Act requires approval by eligible egg producers who during the representative period were engaged in commercial egg production and who are engaged in the production of commercial eggs at the time of voting. The representative period for the conduct of the referendum is determined to be January 1, 1990, through March 31, 1990.

For the order amendment to be approved, it must be favored by at least two-thirds of the producers voting in this referendum, or by a majority of the producers voting if such majority produced not less than two-thirds of the commercial eggs produced, during January–March 1990.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the ballot material that will be used in the referendum has been submitted for approval to the Office of Management and Budget (OMB) and will not be used until approved by OMB. It has been estimated that it will take an average of about 30 minutes for each of the approximately 800 egg producers to participate in the voluntary referendum balloting.

The agents of the Secretary to conduct the referendum are hereby designated to be Janice L. Lockard and Michael S. Newborg, both of the Poultry Division, Agricultural Marketing Service, USDA. The agents may appoint subagents to assist them in performing their functions.

Ballots, instructions, eligibility requirements, and other information pertinent to the referendum will be mailed to all egg producers owning over 30,000 laying hens. In accordance with Public Law 101-220 enacted December 12, 1989, producers owning 30,000 or fewer laying hens are exempt from paying assessments under the Act and therefore not eligible to vote in the referendum. If any eligible voter does not receive a ballot by July 16, 1990, the beginning date of the referendum period, such individual may obtain a ballot from the Chief, Standardization Branch, Poultry Division, AMS, USDA, Room 3944-South, P.O. Box 96456, Washington, DC 20090-6456. Copies of the complete text of the Egg Research and Promotion Order, as amended, may also be obtained from the Poultry Division.

Authority: Pub. L. 93-428, 88 stat. 1171, as amended; 7 U.S.C. 2701 et seq.

Signed at Washington, DC, on June 19, 1990.

Daniel Haley,

Administrator.

[FR Doc. 90-14503 Filed 4-21-90; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Parts 101 and 113

[Docket No. 90-123]

Viruses, Serums, Toxins, and Analogous Products; Autogenous Biologics

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Reopening and extension of comment period.

SUMMARY: We are reopening and extending the comment period for a proposed rule which would amend the regulations concerning autogenous biologics under the Virus-Serum-Toxin Act by: (1) Specifying the data that would be submitted to the Animal and Plant Health Inspection Service in support of a request to use an autogenous biologic in herds or flocks

that are adjacent or non-adjacent to the herd or flock of origin; and (2) specifying data that would be submitted in support of a request to use an isolate for the production of an additional serial beyond 12 months. This extension will provide interested persons with additional time to prepare comments on the proposed rule.

DATES: Consideration will be given only to comments received on or before July 23, 1990.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Center Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 89–200. Comments may be inspected at Room 1141 of the South Building, 14th and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Deputy Director, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville MD 20782, (301) 436–8245.

SUPPLEMENTARY INFORMATION:

Background

On April 23, 1990, we published in the **Federal Register** (FR 15233–15236, Docket No. 89–200) a document proposing to amend the regulations pertaining to autogenous biologics by (1) specifying the data that would be required to be submitted to the Animal and Plant Health Inspection Service in support of a request to use autogenous biologics in herds or flocks that are adjacent to the herd or flock of origin; (2) specifying data that would be required to use such autogenous biologics in herds which are not adjacent to the herd or flock of origin; and (3) specifying data that would be required to be submitted in support of a request to use organisms for the production of an additional serial of an autogenous biologic from cultures which are older than 12 months from the date of isolation.

The proposed rule requested the submission of written comments on or before June 22, 1990. We have received a request from a trade association that the comment period be extended to allow for a more thorough discussion of the proposed rule by the association's members.

In response to this request, we are reopening and extending the comment period for Docket No. 89–200 for 30 days from the original date of the close of the comment period. We will consider all written documents received on or before July 23, 1990. This action will allow the requestor and all other interested persons additional time to prepare comments.

Authority: 21 U.S.C. 151–159, 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 19th day of June 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–14505 Filed 6–21–90; 8:45 am]

BILLING CODE 3410–34–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 40

[Docket No. PRM–40–23]

Sierra Club; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM–40–23) submitted by the Sierra Club. The petitioner submitted an amendment to their petition which is also being denied. The original petition requested that the NRC amend its regulations pertaining to uranium mill tailings sites to require an NRC license for the possession of material being cleaned up under title I of the Uranium Mill Tailings Radiation Control Act (UMTRCA). The NRC believes that petitioner's proposal is inconsistent with both the intent and specific requirements of Title I of UMTRCA. In an amendment to its original petition, the petitioner requested that if their original petition is denied, that NRC ensure that the management of the material at, or derived from, inactive sites be conducted in a manner that protects the public health and safety and the environment. Prior to DOE cleanup at these sites, NRC is not authorized by either UMTRCA or the Atomic Energy Act (AEA) to perform such management oversight. UMTRCA has two very distinct parts: Title I for inactive sites to be cleaned up by the Department of Energy (DOE) with NRC concurrence, and title II which cover sites licensed by the NRC, AEC or Agreement States as of January 1, 1978 and all new sites. The petitioner's proposal would, in essence, require that the NRC regulate title I sites in a similar manner as title II sites. UMTRCA, however, clearly distinguishes the authorities and responsibilities of Federal agencies in regulating title I and title II sites.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and the NRC's letter to the petitioner are available for public inspection or copying in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark Haisfield, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3877.

SUPPLEMENTARY INFORMATION:

The Petition

On February 25, 1981 (46 FR 14021) and May 2, 1983 (48 FR 19722), the Nuclear Regulatory Commission published notice of receipt of a petition and subsequent amendment to the original petition for rulemaking filed by the Sierra Club. The petition and amendment requested that the NRC amend its regulations or practices regarding licensing or management of the possession of uranium mill tailings at inactive sites (title I of the Uranium Mill Tailings Radiation Control Act).

The petitioner proposed that the NRC take the following regulatory actions to ensure that public health and safety and the environment are adequately protected from the hazards associated with byproduct material:

1. Repeal the licensing exemption for inactive mill tailings sites subject to the Department of Energy's remedial program.

2. Require a license for the possession of byproduct material on any other property in the vicinity of an inactive mill tailings site if the byproduct materials are derived from the inactive mill tailings site.

3. Or alternatively, conduct a rulemaking to determine whether a licensing exemption of these sites or the byproduct material derived from the sites constitutes an unreasonable risk to public health and safety.

In the 1983 amendment, the petitioner requested that, in the event that NRC denied the petitioner's earlier request that NRC repeal the licensing exemption for inactive sites or conduct the requested rulemaking, the NRC take further action. Specifically, the petitioner requested that the NRC

ensure that the management of byproduct material located on or derived from inactive uranium processing sites is conducted in a manner that protects the public health and safety and the environment from the radiological and nonradiological hazards associated with uranium mill tailings.

Whether the original petition is granted or not, the petitioner also requested that the NRC establish requirements to govern the management of byproduct material, not subject to licensing under section 81 of the Atomic Energy Act (42 U.S.C. 2111), comparable to the requirements applicable to similar materials under the Solid Waste Disposal Act, as amended (42 U.S.C. 6901 *et seq*). In the alternative, the petitioner suggested that NRC extend the coverage of the requirements in 10 CFR part 40, appendix A, which are now applicable only to licensed byproduct material, to byproduct material not subject to licensing. In addition, the petitioner requested that NRC issue regulations that would require a person exempt from licensing to conduct monitoring activities, perform remedial work, or take any other action necessary to protect health and safety and the environment.

Basis for Request

As a basis for the requested action, the petitioner stated it is a national conservation organization with hundreds of thousands of members. Substantial numbers of Sierra Club members live, work, and travel in proximity to the inactive uranium mill tailings sites, as well as properties in the vicinity of the sites which have been contaminated with radioactive materials derived from them. The petitioner states that the presence of such hazardous materials at these locations constitutes an unreasonable risk to the health and safety of these members. These health hazards may also impair the value of the homes and properties of these local members. In addition, these members make substantial use of nearby lands and waters for hiking, climbing, fishing, boating, camping, photography, nature study, and other forms of physical and spiritual recreation. Their use of these lands and waters is adversely affected by the environmental degradation which results from the continued, unregulated presence of radioactive materials.

The Sierra Club's interest is the protection of present and future Sierra Club members, their progeny, and the public from increased risks of cancer and genetic mutations that may occur as the result of their exposure to unregulated radioactive materials at inactive uranium mill tailings sites and at other properties contaminated by this radioactive material. By the petition, the Sierra Club sought to insure that public exposure to the radioactive material at such sites and locations is minimized and that off-site migration of radioactivity is prevented.

The petitioner also states that for more than 80 years it has sought to create public-governmental cooperation in the preservation and enhancement of the natural environment and its resources of air, water, land, and wildlife. The Sierra Club has also endeavored to provide the public and government with information relevant to environmental issues and to stimulate informed public discussion of them.

The organizational objectives of the Sierra Club are fostered by its activities and its members, including their representation by counsel before legislative bodies, courts, and public agencies. In pursuit of its objectives, the Sierra Club has been involved in many proceedings before the Atomic Energy Commission, and now the Nuclear Regulatory Commission, to safeguard its members and the public at large from uses of radioactive materials which pose undue risks to public health and safety and the environment.

Public Comments on the Petition

The notices of filing of petition and amendment for rulemaking in the **Federal Register** invited interested persons to submit written comments concerning the petition. The NRC received three comments in response to the original petition and none in response to the amendment. All three were from industry or their representatives, and opposed the petition.

Staff Action on the Petition

The response to the petition for rulemaking was delayed because of other rulemaking actions related to uranium mill tailings sites. Because of a number of issues related to uranium mill tailings regulations at the time the petition and its amendment were received, including potential court actions, changing legislative requirements, and another petition, the NRC needed to reassess its entire uranium mill tailings regulatory program. Congressional actions imposed mandated changes to uranium mill tailings regulations. These required changes were not completed until the end of 1987. Another modification to part 40 regulations was required to allow for the licensing and long-term care of mill tailings sites in response to a rapidly approaching program end date (Congressional action has since provided additional time). This action was started in 1987. An Advance Notice of Proposed Rulemaking and a Proposed Rule have since been issued in the **Federal Register** (53 FR 32396; August 25, 1988, and 55 FR 3970; February 6, 1990, respectively).

Although the NRC was considering the petitioner's proposals during this reassessment period, none of the specific regulatory changes eventually made were directly related to the petition. Once the required regulatory changes were made or proposed, the NRC directed its attention to fully respond to petitioner's request.

Reasons for Denial

The petitioner's first proposal requests that the exemption for inactive mill tailings sites subject to the DOE Remedial Action Program should be repealed. The petitioner states that the Atomic Energy Act, as amended, requires the Commission to license the possession of byproduct materials at these sites, unless it makes an express finding that public health and safety will not be imperiled by a licensing exemption. The petition also states that no licensing exemption for DOE-designated inactive sites can be implied from the legislative history of the Uranium Mill Tailings Radiation Control Act. Finally, petitioner states that NRC should determine that licenses are required for the DOE inactive sites.

The NRC believes that the petitioner has misinterpreted both the intent and specific requirements of UMTRCA. UMTRCA has two very distinct parts: Title I for inactive sites to be cleaned up by DOE and Title II which covers sites licensed as of January 1, 1978 and all new sites. The exclusion of Title I sites in 10 CFR part 40 was specifically added to comply with UMTRCA during the active remedial action phase.

NRC's regulations, that petitioner is requesting be amended, deal exclusively with the regulation of Title II sites. Title I sites are not covered by these regulations for the following reasons:

(1) Unless specifically authorized by the Congress, DOE is not subject to NRC regulation.

(2) Title I specifically requires an NRC license only after completion of remedial actions to cover the long-term care of these sites.

(3) Congress specifically gave NRC only a review and concurrence role for DOE sites specified in Title I (inactive sites) during the remedial action phase of the program.

Petitioner appears to assume that since the residual radioactive material is

uranium mill tailings it should legally be considered equally subject to NRC jurisdiction as Title II material. However, even though the material under the Title I program may be chemically and physically similar to material under the Title II program, UMTRCA makes a very clear distinction in how this material is to be controlled and regulated.

The NRC concludes that the UMTRCA statutory basis for the DOE program under Title I does not provide a sufficient basis for NRC to bring DOE within NRC licensing jurisdiction during the active remedial action phase.

The petitioner's second proposal requests that the NRC should also require licensing of the tailings used for construction or other purposes off-site where public health and safety is imperiled thereby. Under Title I of UMTRCA these are called vicinity properties and are to be remediated by DOE under the Title I program. As with the disposal sites, NRC's role has been clearly defined in UMTRCA as one of concurrence and consultation. Use of residual radioactive material for construction and other purposes occurred prior to establishment of Federal authority, as stipulated in UMTRCA, Title I. Prior to that time, residual radioactive material and its use were not controlled. With the establishment of UMTRCA Title I authority, EPA promulgated standards by which DOE has been reclaiming the abandoned sites and remedying vicinity properties where residual radioactive material had been used for construction and for backfill and grading purposes.

Cleanup of these properties is conducted as part of the two general DOE remedial action programs—The Uranium Mill Tailings Remedial Action Program (established in 1978) and the Grand Junction Remedial Action Program (established in 1970). After the processing activities terminated at the Title I sites, windblown tailings and tailings hauled off for construction resulted in contamination of off-site locations. This material was not considered, legally, to be a controlled radioactive material until passage of UMTRCA in 1978. When the Environmental Protection Agency established regulations for conducting cleanup at processing sites, it also established criteria for cleanup of vicinity properties.

The number of off-site areas around each inactive site varies from a few, up to thousands (mostly around Grand Junction, Colorado). DOE has been cleaning up these areas, and transporting the residual radioactive material to the corresponding site for disposal. In some cases, the DOE with NRC concurrence, has stabilized the materials in place. These locations were judged to pose little risk to the public, and cleanup would have involved detrimental impacts far outweighing the benefits. The vicinity property cleanups have had to be done in coordination with the processing site cleanup, since this is where the contaminated material is disposed of.

Alternately, the petitioner requests that the NRC should conduct a rulemaking to determine whether a licensing exemption of such sites or classes of byproduct material will constitute an unreasonable risk to the health and safety of the public.

The NRC does not believe a rulemaking is necessary, because these sites are not exempted from inclusion in the remedial action program. They are being controlled and regulated under the provisions of title I of UMTRCA. As discussed previously, title I provides NRC a concurrence and consultation role during remedial actions and provides for long-term care licensing after remedial actions are completed. The NRC has and will continue to consult and concur with DOE actions to cleanup the inactive sites.

The NRC is completing a rulemaking providing criteria and procedures for the long-term (perpetual) care of these sites. Proposed amendments to 10 CFR part 40 were issued in the **Federal Register** on February 6, 1990, 55 FR 3970. The final rule is scheduled to be completed by the end of 1990. The inactive sites will be licensed under this new rule after completion of remedial actions as specified and required by title I of UMTRCA.

In the petitioner's amendment to their original petition they requested that, in the event that the NRC denies the petitioner's earlier request that NRC repeal the licensing exemption for inactive sites or conduct the requested rulemaking, the NRC take further action. Specifically, the petitioner requested that the NRC ensure that the management of byproduct material located on or derived from inactive uranium processing sites is conducted in a manner that protects the public health and safety and the environment from the radiological and nonradiological hazards associated with uranium mill tailings.

The petitioner also requested, whether the original petition is granted or not, that the NRC establish requirements to govern the management of byproduct material, not subject to licensing under section 81 of the Atomic Energy Act, comparable to the requirements applicable to similar materials under the Solid Waste Disposal Act, as amended. In the alternative, the petitioner suggested that NRC extend the coverage of the requirements in 10 CFR part 40, Appendix A, which are now applicable only to licensed byproduct material, to byproduct material not subject to licensing. In addition, the petitioner requested that the NRC issue regulations that would require a person exempt from licensing to conduct monitoring activities, perform remedial work, or take any other action necessary to protect health and safety and the environment.

The NRC is denying this amendment for essentially the same reasons as the original petition. Title I of UMTRCA provides the NRC only a review and concurrence role in remedial actions. Management of the residual radioactive material prior to and during remedial actions is the responsibility of the Department of Energy. Licensing and concomitant regulation by the NRC occurs only after completion of the remedial action.

While it is true that the sites are not licensed by the NRC prior to completion of remedial action, the sites are managed by DOE under a comprehensive environmental, health, and safety program similar to the types of programs required by the NRC under 10 CFR part 20. This program includes the types of activities requested by petitioner, including monitoring and other actions necessary to provide adequate protection of public health and safety and the environment. In addition, the remedial action program operates under a series of State laws and regulatory programs intended to protect human health and the environment. Although the Commission does not have the authority to approve DOE's environmental, health, and safety program for these sites, the NRC has reviewed and commented on the adequacy of the program and DOE has considered these comments in the design and implementation of its program. Furthermore, NRC exercises oversight through its concurrence role in DOE's remedial program. NRC must concur with DOE's completion determination that the remedial action at any site complies with EPA standards for inactive milling sites. These standards require longevity of isolation from the unrestricted environment, reduction of radon exhalation from the disposal impoundment, geotechnical stability of the disposal structure and ground-water protection. Vicinity property cleanup must also be performed to reduce risks to specific unrestricted use levels. By means of

these clearly stipulated responsibilities, UMTRCA title I established mechanisms in the performance of the remedial work, construction and performance monitoring and perpetual custody and surveillance under NRC license, which all contribute to the main goal of protection of the public health, safety and the environment. The added regulatory mechanism of direct licensing prior to final cleanup would not enhance this main goal; rather it would delay the completion of remedial action, because of the added administrative burden associated with the formal licensing process.

The DOE has essentially completed cleanup at eight sites. At seven sites DOE is actively proceeding toward final cleanup. Initial planning has been completed for the remaining nine sites although significant construction has not yet started. Construction activities at all the inactive sites is scheduled to be completed by the end of 1994.

Dated at Rockville, Maryland this 8th day of June 1990.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 90-14479 Filed 6-21-90; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

[FHWA Docket Nos. 87-5 and 89-12]

RIN 2125-AC30

Truck Length and Width Exclusive Devices; Reopening of Comment Period

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Reopening of comment period.

SUMMARY: The FHWA issued an advance notice of proposed rulemaking (ANPRM) in the **Federal Register** on December 26, 1989 (54 FR 52951). In it, the FHWA requested comments from all interested parties to determine what criteria and procedures the Secretary should use to determine if safety or efficiency enhancing devices are to be excluded under sections 411(h) and 416(b) of the Surface Transportation Assistance Act of 1982 (STAA) (Pub. L. 97-425, 96 Stat. 2097), as amended, when measuring the length and width of vehicles for compliance with federally mandated dimensions.

The comment period was originally scheduled to close March 26, 1990. A petition was received from the Truck Trailer Manufacturers Association (TTMA) to extend the closing date to June 1, 1990, in order for them to obtain measurements of new, in-service, and repaired semitrailers; to describe the methods of manufacture; and to estimate the economic impact of the proposal in the ANPRM on manufacturers, carriers, shippers, and consumers. This request was granted in a decision published in the **Federal Register** on March 21, 1990 (55 FR 10468).

During this time, TTMA began developing a slide presentation to submit to the docket. TTMA requests a further 60-day extension of the comment period to complete this slide presentation. After carefully considering the request, the FHWA has decided to provide the additional opportunity for comment. The comment period is hereby reopened and extended to August 21, 1990.

DATES: Comments on this docket must be received on or before August 21, 1990.

ADDRESSES: Submit written, signed comments, to FHWA Docket No. 89-12, Federal Highway Administration, Room 4232, HCC-10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Commenters may, in addition to submitting "hard copies" of their comments, submit a floppy disk (either 1.2Mb or 360Kb density) in a format that is compatible with word processing programs Word Perfect or WordStar. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m. e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Max Pieper, Office of Motor Carrier Information Management and Analysis, (202-366-4029) or Mr. Charles Medalen, Office of the Chief Counsel (202-366-1354), Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

(Secs. 411 and 416 of Pub. L. 97-424, 96 Stat. 2097, 2150; 23 U.S.C. 315; 49 CFR 1.48)

Issued on June 15, 1990.

T.D. Larson,

Administrator.

[FR Doc. 90-14536 Filed 6-21-90; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-44-87]

RIN 1545-AK46

Minimum Participation

AGENCY: International Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to a proposed regulation relating to minimum participation requirements under section 401(a)(26) of the Internal Revenue code of 1986.

FOR FURTHER INFORMATION CONTACT: Michael E. Lloyd at 202-343-6954 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulation which is the subject of this correction reflects changes made by section 1112(b) and (e) of the Tax Reform Act of 1986 (TRA '86), and sections 1011(h), 6055 and 6065 of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA).

Need for Correction

As published, the proposed regulation contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the proposed regulation published May 14, 1990 (55 FR 19935) FR Doc. 90-10968, is corrected as follows:

Par. 1. On page 19937, column 1, in the preamble, the eighth line under the *"Testing Methodology"* portion, should be corrected to read "under sections 401(a)(26), 410(b), and".

Par. 2. On page 19938, column 2, between the paragraph entitled *"Delegation to the Commissioner"* and *"List of Subjects in 26 CFR 1.401-0—1.425-1"* portions of the preamble, the following should have appeared:

Reliance on this Proposed Regulation

Taxpayers may rely on this regulation for guidance pending inssuance of a final regulation. If a future regulation is more restrictive, such guidance will be applied without retroactive effect.

§ 1.401(a)(26)-1 [Amended]

Par. 3. On page 19939, column 1, § 1.401(a)(26)-1(b)(1) should be revised to read "(1) *Plans that do not benefit any highly compensated employees.* A

plan, other than a frozen defined benefit plan as defined in § 1.401(a)(26)–2(b)(2)(ii), satisfies section 401(a)(26) for a plan year if the plan is not a top-heavy plan under section 416 and the plan meets the following requirements:"

Par. 4. On page 19939, column 3, the eighth and ninth lines of § 1.401(a)(26)–1(b)(3)(iv) should be corrected to read "limits of section 415) except for the minimum".

§ 1.401(a)(26)–3 [Corrected]

Par. 5. On page19941, column 1, line 13 of § 1.401(a)(26)–3(c)(1) should be corrected to read "employees and former employees or 40 percent of the".

§ 1.401(a)(26)–6 [Corrected]

Par. 6. On page 19943, column 3, § 1.401(a)(26)–6(b)(7)(ii) should be revised to read "(ii) *Hours of service, etc.* For purposes of this paragraph (b)(7), the term "hour of service" has the same meaning as set forth in 29 CFR 2530.200b–2 under the general method of crediting service for the employee. If one of the equivalencies set forth in 29 CFR 2530–200b–3 is used for crediting service under the plan, the 500–hour requirement must be adjusted accordingly.".

Dale D. Goode,

Federal Register Liaison, Assistant Chief Counsel (Corporate).

[FR Doc. 90–14426 Filed 6–21–90; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 1

[EE–22–90]

Miscellaneous Regulations for Qualified Plans

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to proposed regulations about the $200,000 compensation limit under section 401(a)(17) and amendments to previously proposed regulations under sections 401(k), 401(l), 401(m), and 410(b) of the Internal Revenue Code.

FOR FURTHER INFORMATION CONTACT: The appropriate attorney as listed in the following table.

Regulation section	Subject	Attorney
1.401(a)(17)–1	$200,000 Limit	David Munroe.
1.401(k)–1	Cash or deferred arrangement.	Catherine Livingston Fernandez.
1.401(l)–1 through –4.	Disparity rules	Patricia McDermott.
1.401(m)–1	Employee and matching contributions.	Catherine Livingston Fernandez.
1.401(m)–2	Multiple use	Richard Lent.
1.401(b)–2 through –9.	Minimum coverage requirements.	Rebecca Wilson.

All of the listed attorneys can be reached at 202–535–3818 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations and amendments of previously proposed regulations which are the subject of this correction are proposed to conform the regulations to sections 1106, 1111, 1112, 1114, 1116, and 1117 of the Tax Reform Act of 1986 (TRA '86) and section 1011(d)(4), (d)(5), (d)(6), (i)(2) and (i)(3) of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA).

Need for Correction

As published, the proposed regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the proposed rulemaking published May 14, 1990 (55 FR 19947) Doc. 90–10969, is corrected as follows:

Paragraph. 1. On page 19947, column 2, the last entry in the table under the **"FOR FURTHER INFORMATION CONTACT"** portion of the preamble, the language "1.401(b)–2 through –9." should be corrected to read "1.410(b)–2 through –9."

Par. 2. On page 19947, column 3, the fourth line under the "*Section 401(a)(17) $200,000 Limit*" portion in the preamble should be corrected to read "to a qualified plan in two ways. First, a".

Par. 3. On page 19948, column 1, the tenth line of the third paragraph under the "*Section 401(a)(17) $200,000 Limit*" portion in the preamble should be corrected to read "employee's accruals or allocations prior to the 1989 plan year that are based on compensation in".

Par. 4. On page 19950, column 3, the last entry in the table under the "Drafting Information" portion of the preamble, the language "1.401(b)–2 through –9." should be corrected to read "1.410(b)–2 through –9."

§ 1.401(a)(17)–1 [Corrected]

Par. 5. On page 19952, column 2, the next to last line in S 1.401(a)(17)–1(c)(2) should be corrected to read "year's compensation taken into account".

§ 1.401(l)–3 [Corrected]

Par. 6. On page 19953, column 3, in § 1.401(l)–3(b), the language "(iii) Uniform and maximum excess allowance * * *" should be corrected to read "(2) Uniform and maximum excess allowance * * *".

Par. 7. On page 19954, column 2, the fourth sentence of § 1.401(l)–3(b)(2)(iv) Example (2)(b) should be corrected to read "Thus, the amount by which the excess benefit percentage exceeds the base benefit percentage for Employee B is .65625%.".

Par. 8. On page 19954, column 3, in § 1.401(l)–3(c)(2)(iii), the heading "(d) *Cumulative deemed uniformities.*" should be corrected to read "*(D) Cumulative deemed uniformities.*".

Par. 9. On page 19955, column 1, the last line of § 1.401(l)–3(c)(2)(iv) Example (1) shoud be corrected to read "with a social security retirement age of 67).".

Par. 10. On page 19955, column 2, the thirteenth line of § 1.401(l)–3(l)(5)(iv) should be corrected to read "after March 31, 1984. See § 301.7701–17T".

Par. 11. On page 19955, column 2, the seventh line of § 1.401(l)–3(l)(7)(ii)(A) should be corrected to read "paragraph (l)(7)(ii)(B) of this section and".

Par. 12. On page 19955, column 3, the last line of § 1.401(l)–3(l)(7)(ii)(B) should be corrected to read "after November 15, 1988.".

Par. 13. On page 19955, column 3, the fifteenth and sixteenth lines of § 1.401(l)–3(l)(7)(ii)(D)(*1*) should be revised by have the language "the employee's average annual compensation determined as if" removed.

Par. 14. On page 19956, column 1, the last line of § 1.401(l)–3(l)(7)(iv) Example (1)(b) should be corrected to read "for X.".

Par. 15. On page 19956, column 2, the third line of § 1.401(l)–3(l)(7)(iv) Example (1)(d) should be corrected to read "compensation of $30,000; and A has average".

Par. 16. On page 19956, column 2, the last two lines of § 1.401(l)–3(l)(7)(iv) Example (1)(d) should be corrected to read "of December 31, 1988)) plus $1,900 (4% times $30,000 plus 7% times $10,000)).".

Par. 17. On page 19956, column 3, the third line of § 1.401(l)–3(l)(7)(iv) Example (2)(d) should be corrected to read "compensation of $30,000; and A has average".

Par. 18. On page 19956, column 3, the fourth line in § 1.401(l)–3(l)(7)(iv) Example (2)(e) should be corrected to

read "retirement benefit as of December 31, 1992, as".

Par. 19. On page 19956, column 3, the last two lines of § 1.401(l)–3(l)(7)(iv) Example (2)(e) should be corrected to read "of December 31, 1988)]) plus $960 (2.4% times $30,000 plus 4.8% times $5,000)).".

Par. 20. On page 19956, column 3, lines eight through ten of § 1.401(l)–3(l)(7)(iv) Example (3)(a) should be corrected to read "normal retirement benefit equal to 50% of the employee's average annual compensation, reduced or offset by 83 ⅓% of the employee's".

Par. 21. On page 19956, column 3, lines twelve and thirteen of § 1.401(l)–3(l)(7)(iv) Example (3)(b) should be corrected to read "benefit of $2,667 ($6,000 ($15,000 times 1⅔) minus $3,333 (83 ⅓% of $10,000 times 1⅔)). As of".

Par. 22. On page 19957, column 1, the third line of § 1.401(l)–3(l)(7)(iv) Example (3)(d) should be corrected to read "compensation of $30,000: and A has average".

Par. 23. On page 19957, column 1, line eight of § 1.401(l)–3(l)(7)(iv) Example (3)(d) should be corrected to read "1989, had been reduced or offset ($3,333) by".

Par. 24. On page 19957, column 1, the last two lines of § 1.401(l)–3(l)(7)(iv) Example (3)(d) should be corrected to read "1988)]) plus $2300 (8% times $40,000 minus 3% times $30,000)).".

Par. 25. On page 19957, column 2, the first line of instructional Par. 8. 3. should be corrected to read "3. Paragraph (b)(3)(ii) is redesignated".

§ 1.401(m)–2 [Corrected]

Par. 26. On page 19957, column 3, line 6 of § 1.401(m)–2(b)(3)(i)(B)(*2*) should be corrected to read "the greater of the relevant actual deferral".

Par. 27. On page 19958, column 1, lines 3 and 8 following the table in § 1.401(m)–2(b)(3)(iii) Example 3, the word "of" should be removed.

Par. 28. On page 19958, column 2, in § 1.401(m)–2(c)(4) Example (1), the language "(6) 1.25 times of (3) . . . . 5.0" should be corrected to read "(6) 1.25 times (3) . . . . 5.0".

Dale Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 90–14428 Filed 6–21–90; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Part 1

[EE–61–88]

RIN 1545–AM95

Nondiscrimination Requirements for Qualified Plans

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to Notice of Proposed Rulemaking.

SUMMARY: This document makes corrections to proposed regulations under sections 401(a)(4) and 410(b) of the Internal Revenue Code. The proposed regulations interpret both the section 401(a)(4) requirement that contributions or benefits provided under a tax-qualified retirement plan may not discriminate in favor of highly compensated employees and the related section 410(b) minimum coverage requirements.

FOR FURTHER INFORMATION CONTACT: Rebecca Wilson and David Munroe at 202–377–9372 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations which are the subject of this correction reflect changes made by the Tax Reform Act of 1986 and by the Technical and Miscellaneous Revenue Act of 1988.

Need for Correction

As published, the proposed regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the proposed regulations published May 14, 1990 (55 FR 19897) FR Doc. 90–10972, is corrected as follows:

Par. 1. On page 19897, column 3, the first two sentences of the **"DATES"**portion of the preamble should be removed and the following two sentences added in their place: "Written comments must be received by July 13, 1990. Requests to speak (with outlines of oral comments) at a public hearing scheduled for Wednesday, September 26, 1990, at 10:00 a.m., and continuing at 10:00 a.m. each day, if necessary, on Thursday, September 27, 1990, and Friday, September 28, 1990, must be received by Wednesday, September 12, 1990."

Par. 2. On page 19902, column 2, the fifth line of the sixth paragraph under the "mployee Contributions" portion in the preamble should be corrected to read "section 401(a)(4) if all employees in the".

Par. 3. On page 19903, column 2, the third through fifth lines of that column under the "Permitted Disparity" portion of the preamble should be removed and replaced with the following added in its place: "percent (70 percent times 1.25 percent), which would support an excess rate of 1.625 percent for the nonhighly".

Par. 4. On page 19903, column 3, the seventh line of the third paragraph under the "*Cross-Testing Defined Benefit and Defined Contribution Plans*" portion of the preamble should be corrected to read "under section 401(a)(4) and may not use".

Par. 5. On page 19904, column 2, the fourth line of the third paragraph under the "*Plan Restructuring*" portion of the preamble should be corrected to read "requirements of sections 401(a)(4) and".

Par. 6. On page 19905, column 2, the last line of the second paragraph under the "*Additional Rules*" portion of the preamble should be corrected to read "410(b) and 401(a)(4)."

Par. 7. On page 19906, column 2, the first line of the first paragraph under the "Failure to Comply" portion of the preamble should read "In general, under section 402(b)(1) of".

Par. 8. On page 19906, column 2, the fourth line of the second paragraph under "Failure to Comply" portion of the preamble should read "plan fails to satisfy section 401(a)(26) or".

Par. 9. On page 19907, column 1, the fourth and fifth sentences of the "Comments and Request to Appear at the Public Hearing" portion of the preamble should be removed and the following two sentences added in their place: "Comments must be received by July 13, 1990. Requests to speak (with outlines of oral comments) must be received by September 12, 1990."

§ 1.401(a)(4)–0 [Corrected]

Par. 10. On page 19907, column 3, in # 1.401(a)(4)–0, the heading appearing thereunder as "*§ 1.410(a)(4)–2 Nondiscrimination in Amount of Contributions*' should be corrected to read "*§ 1.401(a)(4)–2 Nondiscrimination in Amount of Contributions*".

§ 1.401(a)(4)–1 [Corrected]

Par. 11. On page 19911, column 1, the eighth line of § 1.401(a)(4)–1(c)(13) should be corrected to read "§ 1.401(a)(4)–12(f) and (a), unless".

§ 1.401(a)(4)–3 [Corrected]

Par. 12. On page 19913, sixth line of column 3, under § 1.401(a)(4)–3(b)(2)(v) Example 3, should be corrected to read, "more than 133 1/3 percent of 1.4 percent, plan C".

Par. 13. On page 19913, column 3, the 18th line of § 1.401(a)(4)–3(b)(2)(v) Example 4, should be corrected to read "excess rate of 1.6 percent. Thus, the greatest".

Par. 14. On page 19914, column 1, § 1.401(a)(4)–3(b)(3)(ii)(E) should be corrected to read "(E) The plan provides a uniform retirement age for all employees in the plan.".

Par. 15. On page 19914, column 3, lines 7 and 8 § 1.401(a)(4)–3(c)(1)(i) should be corrected to read "normal accrual rate that exceeds the normal accrual rate for any".

§ 1.401(a)(4)–6 [Corrected]

Par. 16. On page 19920, column 1, line 28 of § 1.401(a)(4)–6(a) should be corrected to read "not allocated to separate accounts satisfy".

Par. 17. On page 19920, column 1, line 8 of § 1.401(a)(4)–6(b) should be corrected "employee contributions (the".

Par. 18. On page 19920, column 3, § 1.401(a)(4)–6(b)(4) should be revised to read "(4) *Government plan method.* A plan that includes employee contributions not allocated to separate accounts and that is established and maintained for its employees by the government of any state or political subdivision or by any agency or instrumentality thereof may treat all benefits as employer-derived benefits."

§ 1.401(a)(4)–7 [Corrected]

Par. 19. On page 19921, column 2, the first line following the section heading "*§ 1.401(a)(4)–7 Effect of section 401(l) permitted disparity*" should be corrected to read "(a) *Overview*—(1) *In general.* In".

Par. 20. On page 19921, column 2, line 14 of § 1.401(a)(4)–7(a)(1) should be corrected to read "order to determine an adjusted accrual or".

Par. 21. On page 19922, column 3, line 2 of § 1.401(a)(4)–7(c)(2)(ii) should be corrected to read "under paragraph (c)(2)(i) of this".

Par. 22. On page 19923, column 2, line nine of § 1.401(a)(4)–7(d)(1) should be corrected to read "or (m). See § 1.401(l)–1(a)(3) for other plans to".

§ 1.401(a)(4)–9 [Corrected]

Par. 23. On page 19927, second line of column 1, under § 1.401(a)(4)–9(c)(2)(ii)(A)(*2*) should be corrected to read "no defined contribution plans are the".

Par. 24. On page 19927, column 2, line 12 of § 1.401(a)(4)–9(c)(3)(i)(B) should be corrected to read "section 410(b)(2)(A)(ii) or to all".

Par. 25. On page 19928, column 1, line 31 of § 1.401(a)(4)–9(d)(2)(i)(C) should be corrected to read "plan containing B's 1 percent rate and the" is added in its place.

Par. 26. On page 19928, column 1, line 2 of § 1.401(a)(4)–9(d)(2)(iii) should be corrected to read "the grouping rules in §§ 1.401(a)(4)–".

Par. 27. On page 19928, column 2, next to last line of § 1.401(a)(4)–9(d)(2)(iii) should be corrected to read "the grouping rules are permitted to be".

Par. 28. On page 19928, third line of column 3, under § 1.401(a)(4)–9(d)(2)(v) Example 2 should be corrected to read "Z, and another providing benefits equal to".

§ 1.401(a)(4)–10 [Corrected]

Par. 29. On page 19929, column 2, lines 11 and 12 of § 1.401(a)(4)–10(b)(2)(iii) should have the brackets "[]" removed.

§ 1.401(a)(4)–12 [Corrected]

Par. 30. On page 19930, columns 1 and 2, § 1.401(a)(4)–12, paragraphs (h) through (r) are redesignated as paragraphs (g) through (q).

§ 1.401(a)(4)–13 [Corrected]

Par. 31. On page 19930, column 2, line 4 of § 1.401(a)(4)–13(a) should be corrected to read "1991. For plan years beginning before".

Par. 32. On page 19930, column 3, the last two lines of § 1.401(a)(4)–13(a) should be corrected to read "of §§ 1.401(a)(4)–1 through 1.401(a)(4)–13.".

§ 1.401(b)–5 [Corrected]

Par. 33. On page 19931, column 2, line 9 of § 1.410(b)(5)(d)(4)(ii) should be corrected to read "prescribed in § 1.401(a)(4)–8(c)(2)(ii).".

Par. 34. On page 19932, column 1, line 3 of § 1.410(b)–5(d)(iv) should be corrected to read "using the annual method in § 1.401(a)(4)–".

Par. 35. On page 19933, column 2, line 19 of § 1.410(b)–5(e)(3)(i) should be corrected to read "section. Also, the employee's".

Dale D. Goode,

Federal Register Liaison, Assistant Chief Counsel (Corporate).

[FR Doc. 90–14427 Filed 6–21–90; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7–90–37]

Drawbridge Operation Regulations; Okeechobee Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Lee County Department of Transportation, the Coast Guard is considering a change to the regulations governing the Sanibel Causeway drawbridge across the Caloosahatchee River (Okeechobee Waterway) at Punta Rassa by changing the hours of the regulated operations. This proposal is being made because of the back-to-back openings which are occurring during periods of peak vehicular traffic. This action should accommodate the needs of vehicular traffic and still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before August 6, 1990.

ADDRESSES: Comments should be mailed to Commander (oan) Seventh Coast Guard District, 909 SE 1st Ave., Miami, FL 33131–3050. The comments and other materials referenced in this notice will be available for inspection and copying at Brickell Plaza Federal Building, room 484, 909 SE 1st Avenue, Miami, FL. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Ian MacCartney (305) 536–4103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Ian MacCartney, project officer, and LCDR D.G. Dickman, project attorney.

Discussion of Proposed Regulations

The draw presently opens on signal; except that from 3:45 p.m. to 5:15 p.m., Monday through Friday except federal holidays, the draw need open only at 4:15 p.m. and 4:45 p.m. On Saturdays, Sundays, and federal holidays from 3:45 p.m. to 5:15 p.m., the draw need open only at 4 p.m., 4:15 p.m., 4:30 p.m., 4:45 p.m., and 5 p.m. Exempt vessels shall be passed at any time.

At the request of Lee County, the Coast Guard conducted an analysis of highway traffic conditions and bridge openings. This evaluation revealed numerous back-to-back drawbridge openings were occurring during the heaviest traffic periods causing vehicular congestion. In October 1989, a 60 day temporary regulation was implemented to determine the feasibility of implementing a 15 minute opening schedule from 11 a.m. to 6 p.m. The results indicated this schedule would facilitate highway traffic flow while still meeting the reasonable needs of navigation.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the rule exempts tugs with tows. Since the economic impact of the proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The Authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1g.

2. Section 117.317(k) is revised to read as follows:

§ 117.317 Okeechobee Waterway

* * * * *

(k) Sanibel Causeway bridge, mile 151 at Punta Rassa. The draw shall open on signal; except that from 11 a.m. to 6 p.m., the draw need open only on the hour, quarter hour, half hour, and three-quarter hour. Exempt vessels shall be passed at any time.

Dated: June 4, 1990.

R.E. Kramek,

Commander, Sixth Coast Guard District.

[FR Doc. 90–14453 Filed 6–21–90; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 656

[Docket No. 90650–0157]

RIN 0648–AB25

Atlantic Striped Bass Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA requests public comment on proposed regulations that would prohibit fishing for Atlantic striped bass in the exclusive economic zone (EEZ) 3–200 nautical miles (5.6–270.6 km) offshore from Maine through Florida. This proposed rule is promulgated under the Atlantic Striped Bass Conservation Act Appropriations Authorization (Act), Public Law 100–589, reproduced at 16 U.S.C. 1851 note. The Act requires the Secretary of Commerce (Secretary), after certain consulations, to issue regulations governing fishing for Atlantic striped bass in the Atlantic EEZ. Under these proposed regulations, harvest of Atlantic striped bass from the EEZ would be prohibited. Possession by a person of Atlantic striped bass, even if taken outside the EEZ, would be prohibited while that person is engaged in fishing in the EEZ. Atlantic striped bass taken from the waters of a coastal state could be transported through the EEZ so long as the vessel transporting the Atlantic striped bass was not used for fishing while within the EEZ. Additionaly, no bycatch of Atlantic striped bass may be retained. The proposed ban would terminate upon the expiration of the Act on September 30, 1991. The intent of the ban is to provide protection to the Atlantic Coast striped bass and to ensure the effectiveness of state regulations.

DATES: Written comments must be received on or before July 23, 1990.

ADDRESSES: Send comments on this proposed rule or supporting documents to Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910. Copies of the environmental assessment/regulatory impact review are available from the same address.

FOR FURTHER INFORMATION CONTACT: David G. Deuel or Austin R. Magill, 301–427–2347.

SUPPLEMENTARY INFORMATION:

Background

Section 6 of the Act, reproduced at 16 U.S.C. 1851 note, requires that "[t]he Secretary of Commerce shall promulgate regulations on fishing for Atlantic striped bass in the EEZ that the Secretary determines to be consistent with the national standards in section 301 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and necessary and appropriate to (1) ensure the effectiveness of State regulations or a Federal moratorium on fishing for Atlantic striped bass within the coastal waters of a coastal state; and (2) achieve conservation and management goals for the Atlantic striped bass resource." In developing the regulations, the Secretary shall consult with the Atlantic States Marine Fisheries Commission (ASMFC), the appropriate Regional Fishery Management Councils (Councils), and each affected Federal, state and local government entity. Section 6 of the Act specifies that any regulations imposed would cease to have force and effect at the close of September 30, 1991. Section 6 also states that the appropriate Councils may prepare a fishery management plan (FMP) for Atlantic striped bass in the EEZ, which if approved and implemented, would supersede any regulations promulgated by the Secretary.

The Atlantic striped bass occurs predominately in internal state waters and the territorial sea. Historically, only about 7 percent of commercial landings have been taken seaward of 3 miles (5.6 km) from the coastline. Management responsibility for Atlantic striped bass resides primarily with the coastal states; management occurs through the ASMFC's Interstate Fisheries Management Plan for the Striped Bass (ASMFC Plan). The ASMFC Plan was adopted in 1981 by the coastal states from Maine through North Carolina in response to a severe decline in commercial landings and in juvenile production in Maryland. Increasingly strict state regulations have been imposed by amendments to the ASMFC Plan from 1981 through 1989 to restrict

further the harvest of Atlantic striped bass by recreational and commercial fisheries and allow rebuilding of the stocks. Amendment 4 to the ASMFC Plan, approved by the ASMFC in October 1989, allows for a limited increase in harvest beginning in 1990. However, this transitional fishery does not signal full recovery of the stocks, and restrictive management measures will continue until full recovery occurs. A draft FMP was prepared by the Mid-Atlantic Council in 1984 for the EEZ to complement the ASMFC Plan, but it was not submitted for Secretarial approval.

Limited commercial catches of Atlantic striped bass were made in the EEZ off the Maryland coast in 1987 (24,000 pounds or 10.9 mt) and 1988 (27,000 pounds of 12.2 mt). Maryland's regulations, including a moratorium on the harvest of Atlantic striped bass in certain internal Maryland waters, did not prevent the landing of these fish in Maryland for transshipment to other states. These landings and the absence of regulations for the EEZ prompted concern for a potential increase in harvest from the EEZ and led to the adoption of section 6 of the Act.

Relevant Activities Pursuant to Section 6

In response to section 6 of the Act, NMFS considered several regulatory options for the EEZ and consulted with the ASMFC; the New England and Mid-Atlantic Councils; and other affected Federal and state entities. Based on rather divergent views, NMFS determined that a full record of comment was necessary before determining whether to proceed with a proposed rule. Therefore, an Advance Notice of Proposed Rulemaking (ANPR), published August 16, 1989, at 54 FR 33735, requested public comment on the following options:

Option 1A—Prohibit the harvest and the possession of Atlantic striped bass in the EEZ.

Option 1B—Prohibit the harvest of the Atlantic striped bass in the EEZ.

Option 2—Apply state regulations to fish caught in the EEZ.

Option 3—Promulgate specific Federal regulations on Atlantic striped bass fishing in the EEZ.

Option 4—Maintain status quo or take no action.

Options 1A and 1B both prohibit directed fishing for Atlantic striped bass, defined as a prohibition on the harvest of Atlantic striped bass in the EEZ. Option 1B differs from Option 1A by allowing transit through the EEZ with Atlantic striped bass taken from state waters. Since publishing the ANPR, NMFS has added to Option 1B a prohibition of possession of Atlantic striped bass, even if taken outside the EEZ, while a person is engaged in fishing in the EEZ.

Discussion

Responses to the ANPR totaled 12, though a second letter was received from both the New England and Mid-Atlantic Councils to reaffirm their earlier positions. There were five responses in support of Option 1(A and B), a complete ban on fishing for Atlantic striped bass in the EEZ. These were received from the Maine Department of Natural Resources, the Mid-Atlantic Council, the Sport Fishing Institute, the Delaware Division of Fish and Wildlife, and the U.S. Fish and Wildlife Service. Two responses, both from the Maryland Department of Natural Resources, supported Option 2 (state regulations to apply in the EEZ). Option 4, take no action at this time, was favored by the New England Council, the New York Department of Environmental Conservation, and the ASMFC. Overall, the comments favored Option 1. An issue identified by the New England Council was the need to transport Atlantic striped bass that were legally taken in state waters through the EEZ. For example, a fisherman catching a fish at Block Island, Rhode Island, may need to traverse the EEZ enroute by boat to the mainland. Option 1B would allow this to occur.

Proposed Action

The proposed action is a ban on harvest of Atlantic striped bass in the EEZ that would: (1) Prohibit directed fishing for Atlantic striped bass in the EEZ on the Atlantic coast; (2) prohibit the possession of Atlantic striped bass while engaged in fishing for other species of fish in the EEZ; (3) prohibit retention of Atlantic striped bass caught incidental to the catching of other species of fish; and (4) allow, while transiting the EEZ, the possession of Atlantic striped bass taken outside the EEZ. The ban applies to both commercial and recreational fishing. A ban (Option 1B) was selected for the following reasons:

(1) There is the potential for a major commercial harvest of Atlantic striped bass from the EEZ, which would be detrimental to the stock recovery efforts to date. A ban would prevent this from happening.

(2) The recent relaxation of the regulations on Atlantic striped bass fishing in state waters, through the ASMFC Plan (resulting from the high level of juvenile reproduction in Maryland in 1989), though encouraging, is not an indication that the stock has recovered. Rather, the additional allowed harvest will be very limited, effectively constituting a transitional fishery with very restrictive regulations. This low level of harvest will be maintained until full recovery of the stocks has occurred. During this transitional fishery, a major harvest of Atlantic striped bass from the EEZ would be contrary to the continued rebuilding of the stocks and would have the potential to damage the spawning stocks.

(3) The management of Atlantic striped bass is primarily the responsibility of the coastal states, and is accomplished through the ASMFC Plan. As such, with a ban in the EEZ, the total allowable harvest of Atlantic striped bass would be from state waters (territorial sea and internal state waters) and totally regulated by the states through the ASMFC Plan.

(4) The increased commercial harvest will begin to reestablish the commercial markets, which have been severely restricted in the last few years. The relatively high value of Atlantic striped bass in the market, combined with restrictive regulations allowing a very limited harvest in state waters, will likely encourage illegal harvest. A ban in the EEZ would preclude Atlantic striped bass from being harvested in the EEZ and illegally marketed, and also prevent persons from illegally harvesting Atlantic striped bass in state waters and claiming they were harvested in the EEZ.

(5) In 1987 and 1988, Atlantic striped bass were harvested from the EEZ off Maryland, landed in Maryland and shipped to another state for sale. Maryland law permitted this, even though there was a ban on Atlantic striped bass fishing in Maryland. In 1989, the statute was changed to prohibit the transport through Maryland of fish caught in the EEZ. There is the possibility that there are other states that might currently, or at some future date, have a similar "loophole", which would allow fish caught in the EEZ to be landed for shipment elsewhere. A moratorium in the EEZ would prevent this from happening.

The Act requires that any regulations promulgated by the Secretary be consistent with the national standards set forth in section 301 of the Magnuson Act. Following is a discussion related to each of the seven national standards:

National standard 1 requires that conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the U.S. fishing industry. The basic management of the Atlantic striped bass

occurs through the ASMFC Plan. This Plan provides for the conservation and preservation of the stocks, rather than achievement of maximum yield. Specifically, the goal of the Plan is "[to] perpetuate the [Atlantic] striped bass resource throughout its range so as to generate optimum social and economic benefits to the nation from its commercial and recreational harvest and utilization over time." The proposed regulations on Atlantic striped bass fishing in the EEZ complement the conservation goals of the Plan, and contribute toward prevention of overfishing.

National standard 2 requires that conservation and management measures shall be based upon the best scientific information available. The information base for the proposed regulations, as described in the Environmental Assessment/Regulatory Impact Review, include the most up-to-date information available on Atlantic striped bass from all known sources, including studies conducted by (1) the Emergency Striped Bass Research Study, (2) state fisheries agencies, and (3) researchers at various universities. These studies collectively represent the best scientific information available at this time.

National standard 3 requires, to the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination. The ASMFC Plan provides for the management of Atlantic striped bass from the Maine border with Canada through North Carolina. Although the Atlantic striped bass is known to occur north of Maine, the Plan provides for management throughout the range of the migratory stocks in the coastal Atlantic waters of the United States. Although Atlantic striped bass are found south of North Carolina, they are resident stocks that are not migratory. The proposed regulations apply to Atlantic striped bass in the EEZ from Maine through Florida; thus, they cover the entire range of the Atlantic striped bass within the United States.

National Standard 4 states that conservation and management measures shall not discriminate between residents of different states and, if it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen, such allocation shall be: (A) Fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such a manner that no particular individual, corporation, or other such entity acquires an excessive share of such privileges. The ASMFC Plan provides for overall coastwise management measures, but allows some discretion at the state level to accommodate traditional fisheries or specific requirements in a state. The regulations proposed for the EEZ are uniform throughout the range of the Atlantic striped bass in the EEZ. Thus, there is no discrimination between residents of different states.

National standard 5 provides that conservation and management measures shall, where practicable, promote efficiency in the utilization of fishery resources; except that no measure shall have economic allocation as its sole purpose. The ban on harvest in the EEZ supports efforts to rebuild the stocks of Atlantic coast striped bass. Allowable harvest would be restricted to state waters where traditional fisheries were, and are, being conducted.

National standard 6 states that conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches. The proposed regulations are in response to the decline in abundance of Atlantic striped bass in the past, and are intended to accommodate rebuilding of the stocks. In the future, these regulations will be evaluated and changed to accommodate any changed status of the Atlantic striped bass stocks.

National standard 7 states that conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication. The proposed regulations will be enforced in conjunction with all other fishery regulations in the EEZ, and contain no reporting requirements. Therefore, the costs of these regulations are minimal. There are no other Federal regulatons on the harvest of Atlantic striped bass, thus there is no duplication.

Classification

The Secretary has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Florida. Georgia does not have an approved coastal zone management program. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

The Under Secretary for Oceans and Atmosphere, NOAA, determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order (E.O.) 12291. This determination is based on the draft regulatory impact review (RIR), which concludes that the benefits of the proposed rule outweigh the costs, there are no significant negative impacts on small businesses, and there are no mandatory reporting requirements.

This proposed rule, if adopted, is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographical regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. A copy of the RIR may be obtained (see **ADDRESSES**).

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities because in recent years there has been very limited fishing effort and harvest of Atlantic striped bass from the EEZ. As a result, a regulatory flexibility analysis was not prepared.

NOAA prepared an environmental assessment (EA) for this proposed action and concluded that there would be no significant impact on the environment as a result of this rule. You may obtain a copy of the EA (see **ADDRESSES**).

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 656

Fishing, Fisheries.

Dated: June 19, 1990.

William W. Fox, Jr.,

Assistant Administrator for Fisheries.

For the reasons set out in the preamble, 50 CFR chapter VI is proposed to be amended by adding part 656 to read as follows:

PART 656—ATLANTIC STRIPED BASS FISHERY

Sec.

Sec.
656.4 Relation to the Magnuson Act.
656.5 Civil procedures.

Authority: 16 U.S.C. 1851 note.

§ 656.1 Purpose and scope.

The regulations in this part implement section 6 of the Atlantic Striped Bass Conservation Act Appropriations Authorization, Pub. L. 100–589, reproduced at 16 U.S.C. 1851 note, and govern fishing for Atlantic striped bass in the EEZ on the Atlantic coast.

§ 656.2 Definitions.

The terms used in this part have the following meanings:

Act means the Atlantic Striped Bass Conservation Act Appropriations Authorization, 16 U.S.C. 1851 note.

Area of Custody means any vessel, building, vehicle, live car, pound, pier, or dock facility where Atlantic striped bass might be found.

Atlantic striped bass means members of stocks or populations of the species *Morone saxatilis*, found in the waters of the Atlantic ocean north of Key West, Florida.

Authorized officer means:

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or state agency that has entered into an agreement with the Secretary to enforce the Act; or

(d) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

EEZ means the exclusive economic zone of the United States, from 3 to 200 nautical miles (5.6–370.6 km) offshore of the United States, beginning at the seaward boundary of the territorial sea of the coastal states.

Fishing or *to fish* means:

(a) the catching, taking, or harvesting of Atlantic striped bass;

(b) The attempted catching, taking, or harvesting of Atlantic striped bass; or

(c) Any operation at sea in support of, or in preparation for, any activity described in paragraphs (a) or (b) of this definition.

(d) The term does not include any scientific research authorized by the Federal Government or by any state government.

Fishing vessel means any vessel, boat, ship, or other craft that is used for, equipped to be used for, or of a type that is normally used for:

(a) Fishing; or

(b) Aiding and assisting one or more vessels at sea in the performance of any activity related to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Land means to begin offloading fish, to offload fish, or to enter port with fish.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

Person means any individual (whether or not a citizen of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, state, local, or foreign government or any entity of any such government.

Retain means to fail to return Atlantic striped bass to the sea after a reasonable opportunity to sort the catch.

Secretary means the Secretary of Commerce or a designee.

§ 656.3 Prohibitions.

No person shall:

(a) Fish for, or take and retain, any Atlantic striped bass within the EEZ;

(b) Fail to return to the water immediately, with the least possible injury, any Atlantic striped bass taken within the EEZ incidental to the commercial or recreational fishing for species of fish other than Atlantic striped bass;

(c) Possess any Atlantic striped bass on board a fishing vessel while such vessel is engaged in fishing within the EEZ;

(d) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, land, import or export, any Atlantic striped bass taken and retained in violation of the Act or these regulations;

(e) Interfere with, obstruct, delay, or prevent by any means a lawful investigation, search or seizure conducted in the process of enforcing the Act;

(f) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, transporting, purchase, sale, or transfer of any Atlantic striped bass;

(g) Refuse to allow an authorized officer to board any fishing vessel or to enter any area of custody for the purpose of conducting any search, inspection or seizure in connection with the enforcement of the Act or these regulations;

(h) Dispose of any Atlantic striped bass, or parts, or other matter, in any manner, after any communication or signal from an authorized officer, or after the approach by an authorized officer or an enforcement vessel;

(i) Forcibly assault, resist, oppose, impede, intimidate, threaten or interfere with any authorized officer in the conduct of any search, inspection, or seizure in connecton with enforcement of the Act or these regulations;

(j) Resist a lawful arrest for any act prohibited by the Act or these regulations;

(k) Interfere with, delay, or prevent by any means the apprehension of another person, knowing that such person has committed any act prohibited by the act or these regulations.

§ 656.4 Relation to the Magnuson Act.

The provisions of sections 307 through 311 of the Magnuson Act, as amended, regarding prohibited acts, civil penalties, criminal forfeitures, and enforcement apply with respect to these regulations as if these regualtions were issued under the Magnuson Act.

§ 656.5 Civil procedures.

The civil procedure regulations at 15 CFR part 904 apply to civil penalties, seizures, and forfeitures under the Act and these regulations.

[FR Doc. 90–14488 Filed 6–21–90; 8:45 am]
BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 55, No. 121
Friday, June 22, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 90-108]

Medfly Cooperative Eradication Program Environmental Impact Statement

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of Intent.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service intends to prepare an environmental impact statement for the Medfly Cooperative Eradication Program. The environmental impact statement will analyze the potential environmental effects of a program to eradicate the Mediterranean fruit fly from the United States mainland. We are also requesting comments from the public, including government agencies and private industry, concerning issues that should be addressed in the environmental impact statement. Our request for comments is the first step in the development of an environmental impact statement.

DATES: Consideration will be given only to comments received on or before August 21, 1990.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Michael T. Werner, Deputy Director, Environmental Documentation, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, Room 828, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 90-108. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Michael T. Werner, Deputy Director, Environmental Documentation, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, Room 828, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782, 301-436-8565.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables, especially citrus fruits. Originally native to Africa, it is now found in areas of Africa, the Mediterranean, Europe, Oceania, South America, Central America, and Hawaii. Recent outbreaks have occurred in California and Florida. The insect has the potential to establish itself in these two States, as well as the States of Alabama, Arizona, Georgia, Louisiana, Mississippi, South Carolina, and Texas. If established on the United States mainland, agricultural losses could range from $821 million to $831 million annually.

The Mediterranean fruit fly (Medfly) has been introduced to the United States mainland intermittently since its initial introduction in 1929, however, eradication programs have prevented it from becoming established. These programs have taken place in California, Florida, and Texas, and have been conducted as cooperative efforts between the United States Department of Agriculture and State departments of agriculture. From 1929 to the present, Federal and State expenditures for Medfly eradication programs on the United States mainland have totaled approximately $270 million.

The magnitude of these programs and their controversial nature now indicate the need for the Animal and Plant Health Inspection Service (APHIS) to develop, or cooperate in the development of, a programmatic environmental impact statement (EIS) that will analyze potential environmental effects of various alternative Medfly control activities. Because these control activities are emergency in nature and must be implemented quickly, it is imperative that APHIS and cooperating government entities prepared in advance an EIS that accurately predicts and comprehensively analyzes the effects of these control activities on the environment. Pursuant to section 1501.7 of the Council on Environmental Quality regulations (40 CFR 1501.7), we are issuing this Notice of Intent to prepare such an EIS.

Scoping Process

The initial step in the process of EIS development is scoping. Scoping includes solicitation of public involvement in the form of either written or oral comments, and evaluation of these comments. This process is used for determining the scope of issues to be addressed. We are therefore asking for written comments that identify significant environmental issues that should be analyzed in the EIS. We invite comments from the interested public, from Federal, State, and local agencies that have an interest in the Medfly Cooperative Eradication Program or related programs, and from Federal and State agencies that have either jurisdiction by law or special expertise regarding any national program issue or environmental impact that should be discussed in the EIS. After reviewing the comments, we will schedule public meetings to provide further opportunity for comment. The dates and locations of these meetings will be announced in a subsequent Federal Register notice.

Alternatives

We will consider all reasonable and realistic action alternatives recommended in the comments we receive. The following alternatives have already been identified for comprehensive analysis in the EIS:

(1) Intergrated control,
(2) Chemical control,
(3) Sterile insect technique,
(4) Physical control,
(5) Cultural control, and
(6) No action.

Major Issues

The following are some of the major issues that will be discussed in the EIS:

(1) Program and control alternatives,

(2) Use of aerially applied chemical insecticides,

(3) Potential impacts of the alternatives on the physical environment, the non-target biological environment (especially endangered and threatened species), and the human

environment (especially health and safety).

(4) Potential cumulative impacts, and

(5) Monitoring.

Preparation of the EIS

Following scoping, we will prepare a draft EIS for the Medfly Cooperative Eradication Program. A notice announcing that the draft EIS is available for review will then be published in **Federal Register.** The notice will also request comments concerning the draft EIS.

Done in Washington, DC, this 19th day of June 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-14506 Filed 6-21-90; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Exemption From Appeal; North Salvage, Tahoe National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal, North Salvage, Tahoe National Forest.

SUMMARY: The Forest Service is exempting from appeal its decision to sell dead and dying trees that are being killed by the combined effects of bark beetles ans severe drought and to rehabilitate the affected area. The project area is located in the northeast quarter of the Downieville Ranger District, Tahoe National Forest. The proposed salvage and restoration project involves approximately 60,000 acres and proposes harvest of up to 20 million board feet (MMBF) with a combination of tractor, cable and helicopter yarding systems.

There are higher than normal levels of tree mortality occurring throughout the Tahoe National Forest as a result of three years of below normal precipitation. The drought has had the greatest effect on reducing vigor and weakening natural defense mechanisms of over-stocked and over-mature stands. True fir stands above 5,000 feet elevation are experiencing the greatest mortality. The rapid deterioration rate of true fir requires that it be removed as soon as possible if the timber is to be utilized and its value recovered.

The Forest Supervisor has determined through environmental analysis, which included public scoping, that there is good cause to expedite this project. Up to 50% of the trees in some stands within the analysis area are dead or dying. Regional entomologists have analyzed the infestation situation and have found no economical or practical means to control the insect epidemic at the Forest level. Although salvage harvesting will not control the insect epidemic, it would recover valuable timber that would otherwise deteriorate and create a severe fire hazard.

It is extremely important to remove the dead and dying timber prior to deterioration and subsequent value losses which would make the sale economically infeasible because of higher than normal harvesting costs. It is also important to harvest the dead and dying timber when there is the potential to get the highest return to the government and collect Knutsen-Vandenburg funds to restore forest values being lost as the result of extensive tree mortality.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt from appeal the decision for the salvage harvest and restoration of the North Salvage analysis area on the Downieville Ranger District, Tahoe National Forest. The project would recover timber that would otherwise be lost to deterioration if delayed. It would also reduce the severe risk of wildfire, which would result if the project is not implemented in a timely manner.

EFFECTIVE DATE: This decision will be effective June 22, 1990.

FOR FURTHER INFORMATION CONTACT: Questions about this decision should be addressed to Ed Whitmore, Timber Management Staff Director, Pacific Southwest Region, Forest Service, USDA, 630 Sansome Street, San Francisco, CA 94111 at (415) 705-2648, or to Frank J. Waldo, Acting Forest Supervisor, Tahoe National Forest, Highway 49 and Coyote Street, Nevada City, CA 95959 at (916) 265-4531.

ADDITIONAL INFORMATION: The Cooperative Forestry Assistance Act of 1978 authorizes the Secretary of Agriculture to enhance the growth and maintenance of forests, promote the stability of forest-related industries and employment associated therewith, aid in forest fire prevention and control, conserve the forest cover on watersheds, and protect recreational opportunities and other forest resources.

The environmental analysis for this proposal is documented in the North Salvage Environmental Assessment. Public participation in the analysis was solicited through a public meeting held March 14, 1990 in Grass Valley, California, a news release in mid-April, and through mailings to publics owning property adjacent to the Forest, mining claimants, holders of special use permits and those others known to be interested in timber management on the Tahoe National Forest. Comments received were considered in the issues, range of alternatives considered and the management requirements and mitigation measures developed.

The analysis indicates that up to 20 million board feet, primarily true fir, valued at approximately two million dollars, is being killed by the combined effects of drought and bark beetle attack. Up to 70% of the merchantable volume can be lost by the second year if true fir is left as standing dead. (USDA Circular 962 was used as a reference for the volume loss calculation and it describes decay rates in timber killed by fire. Pacific Southwest Research Station personnel have stated that the decay in timber killed by insects would be equivalent or greater.) Delaying or not harvesting this timber could result in an estimated loss of up to $500,000 in National Forest Receipts to Counties, as well as employment opportunities generated from harvest, milling and sale of the timber in Nevada, Placer, Plumas, Sierra, and/or Yuba Counties.

The environmental analysis documents that salvage harvesting can be conducted to protect other resource values such as wildlife habitat, soil productivity, and watershed values. Delays for any reason could jeopardize chances of accomplishing recovery and rehabilitation of the damaged resources. These delays would result in volume and value losses, and increase the chances of wildfire due to the large quantity of standing and down fuels. The decision for the project will be issued in June 1990.

Dated: June 15, 1990.

David M. Jay,

Deputy Regional Forester.

[FR Doc. 90-14493 Filed 6-21-90; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Finding of No Significant Impact for Three Creek Watershed, Holston River Soil and Water Conservation District, Washington County, VA

The watershed protection measures to be installed in the Three Creek Watershed will be funded on a cost-share basis under the authority of the Watershed Protection and Flood Prevention Act, Public Law 83-566. An interdisciplinary evaluation of the environment was made by the Soil Conservation Service (SCS) in consultation with local, state and

federal agencies and interested persons during the planning of this measure.

The purpose of the watershed plan is to reduce erosion to sustain productivity and improve water quality. Community benefits will result through the installation of this plan which is sponsored by the Holston River Soil and Water Conservation District and the Washington County Board of Supervisors.

Planned Action

Treatment includes the protection of 2,684 acres of cropland, 6,458 acres of pastureland, 440 acres of forestland, and 207 acres of otherland through installation of enduring and management-type conservation practices.

Environmental Impact

The proposed plan will reduce sediment damages and improve water quality.

One endangered specie, one threatened specie, and four candidate species occur in the watershed. The conservation practices planned for this watershed would protect these species.

An inventory of all known archaeological and cultural resources has been made and the sites are located on U.S.G.S. Quadrangle Maps for reference by SCS personnel. This is to prevent any soil disturbing activity at any known sites.

The area receiving treatment has 2,675 acres of prime farmland.

Adverse Environmental Impacts Which Cannot be Avoided

Installation of the proposed works of improvement will have short-term adverse impacts on noise, dust, and exhaust levels. These levels will increase only during construction.

Alternatives

1. No action. With no action, there would be continued erosion and sediment damage to the resource base and downstream.

2. The National Economic Development Plan (NED) would protect 2,101 acres of cropland, pastureland, and forestland. Erosion sediment reduction would be 16,021 tons *per* year.

3. The Resource Protection Plan (RP) would protect 9,789 acres of cropland, pastureland, and forestland. Sediment delivered to streams would be reduced by 84,222 tons *per* year.

Short-Term Uses vs. Long-Term Productivity

The reduction in erosion and sediment damages and the installation of conservation practices will improve the quality of life in this area.

Commitment of Resources

Labor, capital resources and energy used by these planned actions will be irretrievably and irreversibly committed.

Conclusion

This Watershed Plan has been planned and environmentally evaluated to ensure that effects are commensurate with the impacts described in this Finding of No Significant Impact. The Environmental Assessment and Environmental Evaluation file are available for public inspection through the office of Mr. George C. Norris, State Conservationist, USDA, Soil Conservation Service, Federal Building, Room 9201, 400 North Eighth Street, Richmond, Virginia 23240–9999, telephone (804) 771–2455.

I have reviewed the Environmental Assessment and have determined this Watershed Plan will not result in significant impact on the human environment. I conclude that an Environmental Impact Statement is not necessary.

Dated: June 15, 1990.

George C. Norris,

State Conservationist.

[FR Doc. 90–14494 Filed 6–21–90; 8:45 am]

BILLING CODE 3410–16–M

Three Creek Watershed, Virginia; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Three Creek Watershed in Washington County, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. George C. Norris, State Conservationist, Soil Conservation Service, 400 North Eighth Street, Richmond, VA 23240–9999, telephone (804) 771–2455.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. George C. Norris, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for the protection of 9,789 acres of cropland, pastureland, and forestland in Washington County, Virginia. This protection will be accomplished by installation of soil and water conservation practices.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single-copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. George C. Norris, State Conservationist. No Administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Executive Order 12372 regarding inter-government review of federal and federally-assisted programs and projects is applicable.)

Dated: June 15, 1990.

George C. Norris,

State Conservationist.

[FR Doc. 90–14495 Filed 6–21–90; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Completion of Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of completion of Panel Review of a final determination made by the Department of Commerce, International Trade Administration, Import Administration, respecting Red Raspberries from Canada filed by Clearbrook Packers, Inc. (Clearbrook), Marco Estates Ltd./Landgrow Packers (Marco), and Mukhtiar & Sons Packers, Ltd. (Mukhtiar).

SUMMARY: Pursuant to Rule 82 of the Article 1904 Panel Rules ("Rules"), the Panel Review of the final determination described above has been completed, effective June 18, 1990.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, Suite 4012, 14th and Constitution Avenue, Washington, DC., 20230, (202) 377–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Goverment of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 53165). The panel review in this matter was conducted in accordance with these Rules.

On March 15, 1989, a Request for Panel Review of the final determination made by the Department of Commerce ("Department") respecting Red Raspberries from Canada was filed by Clearbrook Packers, Inc., Marco Estates Ltd./Landgrow Packers, and Mukhtiar & Sons Packers, Ltd., pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. A panel was convened in accordance with the Rules and oral arguments were presented on all issues on October 20, 1989.

In a decision dated December 15, 1989 (54 FR 52838), the panel initially affirmed in part and remanded in part the Department's final determination. The panel held defective and remanded the Department's finding that home market sales of Clearbrook and Mukhtiar were not adequate for use as the basis for determining foreign market value. The panel directed the Department to provide explanations of the reasons why Clearbrook's and Mukhtiar's home market sales do not form an adequate basis for calculating foreign market value.

After considering the Determination on Remand filed by the Department on January 26, 1990, and the comments in opposition filed by complainants on February 9, 1990, the panel ordered the Department to file an amended final determination within 30 days, using home market sales of Clearbrook and Mukhtiar as the basis for foreign market value. Notice of the panel decision was published in the **Federal Register** on April 18, 1990 (55 FR 14847). On May 2, 1990, the Department filed its Determination on Remand, pursuant to Rule 75 of the Rules, in compliance with the panel decision.

No Notice of Motion for review of the Determination on Remand and no request for an extraordinary challenge committee has been filed with the responsible Secretary. Accordingly, pursuant to Rule 82, this Notice of Completion of Panel Review shall be effective on June 18, 1990, the 46th day following the filing of the Determination on Remand. Pursuant to Rule 85, the panelists are discharged from their duties effective June 18, 1990.

Dated: June 18, 1990.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 90–14471 Filed 6–21–90; 8:45 am]

BILLING CODE 3510–GT–M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Decision of Panel

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Decision of Panel in panel review of final affirmative countervailing duty determination made by the Department of Commerce, International Trade Administration, Import Administration, respecting New Steel Rail, Except Light Rail, from Canada, Secretariat File No. USA–89–1904–07.

SUMMARY: By a decision dated June 8, 1990, the Binational Panel remanded in part and affirmed in part the Department of Commerce's final affirmative countervailing duty determination published August 3, 1989, 54 FR 31,991 and amended September 22, 1989, 54 FR 39,032. A copy of the complete Panel decision is available from the United States Secretary, FTA Binational Secretariat.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, Suite 4012, 14th and Constitution Avenue, Washington, DC. 20230, (202) 377–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The panel review in this matter was conducted in accordance with these Rules.

Background

In its Final Affirmative Countervailing Duty determination, the Department of Commerce ("Commerce") discussed numerous federal and provincial programs which were allegedly used to subsidize the Canadian steel rail industry, and ultimately determined the estimated net subsidy for all manufacturers or producers, except Algoma Steel Corporation Ltd., to be 113.58% *ad valorem*, later reduced by amendment to 112.34% *ad valorem*. Sydney Steel Corporation ("Sysco") challenged three aspects of the final determination and amended order:

(1) Commerce's treatment of grants for the payment of principal and interest on debentures as nonrecurring grants to be allocated over the life of the equipment (15 years in this instance) rather than expensed in the year received;

(2) Commerce's conclusion that the explicit guarantee by a government of a loan to a firm owned by that government is a countervailable benefit, on the grounds that the normal commercial practice in Canada countenances loan guarantees by

parents to subsidiaries, regardless of whether the subsidiary is equityworthy or creditworthy; and

(3) Commerce's calculation of the benefit to Sysco of three studies funded under the Economic Planning Subsidiary Agreement of the Economic and Regional Development Agreement ("ERDA").

Panel Decision

Upon examination of the record and after consideration of the arguments presented by the participants in their briefs and at a hearing held in Washington DC on April 18, 1990, the Panel:

(1) Remanded to Commerce that aspect of the final determination that treats the payments of "Grants for Payment of Principal and Interest on Debentures" as non-recurring grants. Commerce was instructed to recalculate Sysco's subsidies by expensing the entire amount of each such grant in the year it was received by Sysco;

(2) Remanded to Commerce that aspect of the final determination that treats the loan guarantees of the Government of Nova Scotia to Sysco as a countervailable benefit. The Panel determined that Commerce must either: (i) Provide to the Panel from the administrative record substantial evidence as to the basis for Commerce's conclusion that notwithstanding the normal Canadian commercial practice of corporate parents providing loan guarantees to their subsidiaries, such practice does not include situations where the subsidiary is non-equityworthy and non-creditworthy, or (ii) recalculate Sysco's subsidy treating the loan guarantees as non-countervailable benefits; and

(3) Affirmed Commerce's calculation of the benefit to Sysco of three studies funded under ERDA.

The Panel had also received submissions from the participants relating to *Ipsco* v. *United States*, Slip Op. 89–1486 (Fed. Cir. April 3, 1990), and the possible relevance of that case to the issues before the Panel. The Panel determined that the holding in *Ipsco* relating to the calculation of countervailing duties using a country-wide rate did not concern an issue relevant to the Panel review.

The panel ordered that the results of the remand on issues (1) and (2), above, shall be provided by Commerce to the Panel within 30 days of the date of this decision (by not later than July 9, 1990). Other parties shall have 15 days thereafter to provide the Panel with any comments on Commerce's remand results.

Dated: June 18, 1990.

James R. Holbein,

United States Secretary FTA Binational Secretariat.

[FR Doc. 90–14470 Filed 6–21–90; 8:45 am]

BILLING CODE 3510–GT–M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Commerce.

ACTION: Notice of request for panel review of final results of Antidumping Duty Administrative Review made by the Department of Commerce, International Trade Administration, Import Administration, respecting replacement parts for self-propelled bituminous paving equipment from Canada, filed by Northern Fortress Ltd., successor to Fortress Allatt, Ltd., with the United States Section of the Binational Secretariat on June 14, 1990.

SUMMARY: On June 14, 1990, Northern Fortress Ltd., successor to Fortress Allatt, Ltd., filed a request for panel review with the United States Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Panel review was requested of the final results of an antidumping duty administrative review respecting replacement parts for self-propelled bituminous paving equipment from Canada, covering the period September 1, 1987 through December 31, 1988, made by the International Trade Administration, Import Administration, Import Administration File Number A–122–057. Notice of this determination was published in the **Federal Register** on May 15, 1990 (55 FR 20175). The Binational Secretariat has assigned Case Number USA–990–1904–01 to this Request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The panel review in this matter will be conducted in accordance with these Rules.

Rule 35(2) requires the Secretary of the responsible section of the FTA Binational Secretariat to publish a notice that a first Request for Panel Review has been received. A first Request for Panel Review was filed with the United States Section of the Binational Secretariat, pursuant to Article 1904 of the Agreement, on June 14, 1990, requesting panel review of the final determination described above.

Rule 35(1)(c) of the Rules provides that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is July 16, 1990);

(b) A Party, investigating authority or interested person that does not file a Complaint may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel review (the deadline for filing a Notice of Appearance is July 30, 1990); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: June 18, 1990.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 90–14472 Filed 6–21–90; 8:45 am]

BILLING CODE 3510–GT–M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council, Public Meetings and Public Hearing

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council and its Committees will hold public meetings on July 9–11, 1990, at the Sheraton Royal Biscayne Beach Resort and Racquet Club, 555 Ocean Drive, Key Biscayne, FL. On July 9 the Council will hold a public hearing, from 10:30 a.m., to noon, on the proposed Amendment #1 to the Coral Fishery Management Plan (FMP). The Council will accept written comments until July 3, 1990, at its address, below.

Council

The Gulf of Mexico Council will begin its meeting on July 11 at 9:45 a.m. From 10 a.m., to 10:30 a.m., the Council will hear public testimony on the Tortugas Shrimp Sanctuary. From 10:30 a.m., to 11 a.m., the Council will hear public testimony on the draft Amendment #1 to the Coral FMP. It also will review committee recommendations and hear a report on red snapper alternatives for presentation at public hearings. The Council meeting will recess at 5 p.m.

On July 12 the Council meeting will reconvene at 8:30 a.m. The Council will continue discussion of red snapper alternatives for presentation at public hearings; review the overfishing definition for shrimp; and hear the enforcement and the Director's reports. The Council will adjourn its meeting at noon.

Committees

On June 9 at 1 p.m., the Coral Management Committee will meet. The Coral meeting will be followed by a meeting of the Shrimp Management Committee, which will recess at 5:30 p.m.

On July 10 at 8 a.m., the Joint Shrimp/Reef Fish Management Committees will meet, and will recess at 5 p.m.

On July 11 at 8 a.m., the Joint Shrimp/Reef Fish Management Committees will reconvene, and will adjourn at 9:30 a.m.

For more information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 881, Tampa, FL 33609; telephone: (813) 228–2815.

Dated: June 19, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–14541 Filed 6–21–90; 8:45 am]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council and its advisory entities will hold public meetings on July 9–12, 1990, at the Columbia River Red Lion, 1401 North Hayden Island Drive, Portland, OR.

The Council will begin its meeting on July 11 at 8 a.m., to discuss anchovy management issues, including the spawning biomass and quotas for the 1990–1991 season, and revisions to Amendment #6 to the Anchovy Fishery Management Plan (FMP). This amendment was adopted by the Council in April 1990 and submitted to the National Marine Fisheries Service (NMFS) for review and approval. The NMFS has since responded that the amendment is incomplete because it does not address habitat and vessel safety issues. Additionally, the NMFS would like the Council to reconsider the overfishing definition for anchovy.

On July 11 at 4 p.m., the Council will accept public comments on issues not on the agenda.

Also, on July 11 and continuing on July 12 the Council will consider numerous groundfish management issues, including: (1) The status of the yellowtail rockfish stock assessment; (2) inseason management measure adjustments for rockfish and sablefish; (3) the status of the Pacific whiting fishery and reassessment of domestic annual processing; (4) allocation of Pacific whiting between Canada and the United States; (5) the limited entry amendment to the Groundfish FMP; (6) Amendment #4 to the Groundfish FMP, which is a major rewrite of the plan that provides the Council with more flexibility to adopt and revise measures; (7) the overfishing definition; (8) offshore processor reporting regulations; and (9) public proposals for 1991 management measures.

On July 12 the Council will discuss salmon management, habitat issues and administrative matters. Salmon issues include: (1) The sequence of events and the current status of the 1990 fishery; (2) Amendment #10 to the Salmon FMP; (3) consultation on Sacramento River winter chinook under the Endangered Species Act (ESA); and (4) the status of Columbia River stocks petitioned under the ESA.

The *Scientific and Statistical Committee* will meet on July 9 at 1 p.m., to discuss scientific issues on the Council's agenda, and will reconvene on July 10 at 8 a.m.

The *Groundfish Advisory Subpanel* will meet on July 10 at 8 a.m., to address groundfish management issues on the Council's agenda.

The *Habitat Committee* will meet on July 10 at 8:30 a.m., to discuss current significant habitat issues affecting fisheries under the Council's jurisdiction.

The *Budget Committee* will meet on July 11 at 5 p.m., to discuss the Council's budget matters.

Detailed agendas for the above meetings will be made available to the public after June 28, 1990. For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 SW First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: June 19, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–14542 Filed 6–21–90; 8:45 am]

BILLING CODE 3510–22–M

[Modification No. 1 to Permit No. 617]

Endangered Species Permit Modification; Georgia Department of Natural Resources (P403)

Notice is hereby given that, pursuant to the provisions of sections 217–222 of the regulations governing endangered and threatened species permits, Scientific Research Permit No. 617 issued to the Georgia Department of Natural Resources, 1200 Glynn Avenue, Brunswick, Georgia 31523–9990, on December 4, 1987 (52 FR 47441), is modified as follows:

Section B.1 is replaced by:

1. This research effort shall be conducted by the means, in the areas, and for the purposes set forth in the application and modification.

Section B.9–11 are added:

9. The Permit Holder shall use the Protocol provided by Dr. Boyd Kynard, U.S. Fish and Wildlife Service, Northeast Anadromous Fish Research Laboratory, when implanting telemetry tags inside shortnose sturgeon.

10. A mortality of two shortnose sturgeon is authorized. If two fish die, tagging shall be discontinued. The Holder shall suspend research activities and provide a report to the

Assistant Administrator for Fisheries. The report shall include necropsy results, a description of the events surrounding the mortality and identification of steps that will reduce the potential for additional mortalities. Authorization to proceed with subsequent research activities will be at the discretion of the Assistant Administrator for Fisheries.

11. Only one tag may be implanted in each of the 10 fish authorized for tagging.

As required by the Endangered Species Act of 1973, issuance of this modification is based on the finding that such modification (1) Was applied for in good faith, (2) will not operate to the disadvantage of the endangered species that is the subject of the modification, and (3) will be consistent with the purposes and policies in Section 2 of the Act. This modification was issued in accordance with and is subject to Parts 220–222 of Title 50 CFR, of the National Marine Fisheries Service regulations governing endangered species permits.

Documents in connection with the above modification are available for review by appointment in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Room 7324, Silver Spring, MD 20910 (301/427–2289); and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893–3141).

Dated: June 15, 1990.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 90–14445 Filed 6–21–90; 8:45 am]

BILLING CODE 3510–22–M

Endangered Species; Application for Permit; Southwest Fisheries Center, National Marine Fisheries Service (P77#42)

Notice is hereby given that the Applicant has applied in due form for a Permit to take and import endangered species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS) regulations governing endangered fish and wildlife permits (50 CFR part 217–222).

1. *Applicant*: Dr. Izadore Barrett, Director, Southwest Fisheries Center, NOAA, National Marine Fisheries Service, La Jolla, California 92038.

2. *Type of Permit*: Scientific Purposes.

3. *Name and Number of Species:* Hawksbill turtle *(Eretmochelys imbricata)*, Leatherback turtle (*Dermochelys coriacea*), Olive ridley sea turtle (*Lepidochelys olivacea*), Green turtle (*Chelonia mydas* and the eastern Pacific form of the green turtle is also known as the black turtle (*Chelonia mydas agassizi*)), Loggerhead turtle (*Caretta caretta*).

A maximum of 180 turtles, caught incidentally to fishing efforts by the U.S. tuna purse seine fleet, will be captured, tagged and released.

4. *Type of Take*: The applicant proposes to identify, measure, examine, tag and release turtles that are caught incidental to the tuna/dolphin U.S. purse seine fishery in the eastern tropical Pacific (ETP). The objectives of the proposed project are to monitor the take of turtles by the fishery, to record data on the geographic distribution of turtles at sea, to investigate movements, and to study the life history of sea turtles. The investigation of sea turtles pelagic ecology is necessary to obtain information for use in developing effective management measures aimed at reversing the decline of sea turtle populations.

The applicant is also requesting to salvage and import any turtles found dead. Dead turtles, or parts, will be transported to the NMFS Southwest Fisheries Center for further life history analysis.

5. *Location and Duration of Activity:* The exact region of research will be determined by the activity of the U.S. purse seine fleet. The majority of fishing activity associated with the purse seine fishery occurs in the ETP (20°N to 15°S and westerly to 150°W). The applicant requests that the permit extend for five years with a starting date of 1 August 1990.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, NOAA, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of NOAA, NMFS.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources, NOAA, NMFS, 1335 East-West Highway, Silver Spring, Maryland 20910; and

Director, Southwest Region, NOAA, NMFS, 300 South Ferry Street, Terminal Island, California 90731–7415.

Dated: June 15, 1990.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 90–14443 Filed 6–21–90; 8:45 am]

BILLING CODE 3510–22–M

Endangered Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Modification No. 1 to Permit No. 584.

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (2) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216, and § 220.24 of the Regulations Governing Endangered Species (50 CFR Part 217–222), Scientific Research Permit No. 584 issued to the National Marine Mammal Laboratory, Northwest and Alaska Fisheries Center, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, Washington 98115 on April 24, 1987 (52 FR 13743) is modified as follows:

Delete A.1.a.

Revise B.1. to read:

1. This research shall be conducted by the means, in the areas, and for the purposes set forth in the application and the modification request.

Add the following new conditions to B.5.

a. A northern sea lion research activity shall be suspended and the experimental protocol and handling procedures for that facility shall be reviewed and, if necessary, revised, in consultation with the Marine Mammal Commission, if two northern sea lions die during any given field season as a direct result of this handling procedure, or if there is other evidence of adverse impacts upon the subject animals or population as a whole.

b. The intentional lethal taking of harbor seals shall only occur in areas where significant declines have not occurred or when lethal take is necessary to determine the cause(s) of or how to stop and reverse the declines. A research activity on harbor seals shall be suspended and the experimental protocol and handling procedurs for that activity shall be reviewed and, if necessary, revised in consultation with the Marine Mammal Commission, if two harbor seals are accidentally killed during any given field season as a direct result of this handling procedure, or if there is other evidence of

adverse impacts upon the subject animals or population as a whole.

c. The animals that are killed to retrieve instruments shall be counted against the total number of animals authorized to be sacrificed.

B.8. is revised to read:

8. Whenever feasible, the Permit Holder should have a veterinarian experienced in anesthesia of marine mammals present in the field during the chemical restraint/immobilization studies. Adequate resuscitation equipment shall be available for use at the experimental site in the event a sedated animal stops breathing. In addition, if a restraining bag is utilized in the capture/restraint process, it shall be used for the shortest possible time and be designed to assure that the animal has adequate ventilation.

Add to B.9:

9. * * * Authorization to continue research in subsequent years shall be deferred pending submission and approval of a report on each preceding year's activities and specific research proposed for the forthcoming year.

This modification is effective upon publication in the **Federal Register.**

Documents submitted in connection with the above modification are available for review in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East Highway, Rm. 7330, Silver Spring, Maryland 20910;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731–7415.

Dated: June 15, 1990.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 90–14444 Filed 6–21–90; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1990; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to Procurement List 1990 commodities to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATES: July 23, 1990.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On March 30, 1990, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (55 FR 11994) of proposed additions to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540).

Comments were received from the current contractor prior to the issuance of the notice of proposed addition of this wiping cloth to the Procurement List and, during the comment period, from a national association representing wiping cloth manufacturers.

The current contractor claimed that the addition of this commodity to the Procurement List would have serious adverse impact on its sales, employment, and profitability. The Committee recognizes that some impacts are a necessary consequence of its operations, and carefully considers the overall impact of each of its actions. The Committee has determined that the addition of these wiping cloths to the Javits-Wagner-O'Day Program would not have a severe adverse impact on the current contractor.

The Committee also considered concerns expressed about the loss of employment in arriving at its decision to add these wiping cloths to the Procurement List. The Committee has determined that the employment gains for persons with severe physical or mental disabilities, who have difficulty in finding and holding a job, outweigh the possible hardships on persons who do not have such disabilities.

The Association commented that the withdrawal of these wiping cloths from the competitive procurement system would be injurious to its members who had successfully furnished some of the Government's requirements for these items in the past. The estimated annual value of the Government procurement for these wiping cloths is approximately $84,000 which represents an insignificant portion of the total market for wiping cloths and would have minimal effect on the market for items of this type.

After consideration of material presented to it concerning the capability of a qualified workshop to produce these commodities at a fair market price, the impact of the addition on the current contractor and the significant comments received, the Committee has determined that these commodities are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 52–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities listed.

c. The actions will result in authorizing small entities to produce the commodities procured by the Government.

Accordingly, the following commodities are hereby added to Procurement List 1990:

Cloth, Wiping
6532–LL–N83–0490
6532–LL–N83–0491

(Requirements of the Norfolk Naval Shipyard, Portsmouth, VA only)

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 90–14520 Filed 6–21–90; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1990; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1990 a commodity to be produced and a service to be provided by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 23, 1990.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodity and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity and service to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540):

Commodity

Lanyard, Camouflage
1080-01-073-3198

Service

Mess Attendant Service, Ellsworth Air Force Base, South Dakota.

Beverly L. Milkman,

Executive Director.

[FR Doc. 90-14521 Filed 6-21-90; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before July 23, 1990.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to George P. Sotos, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: George P. Sotos (202) 732-2174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from George Sotos at the address specified above.

Dated: June 18, 1990.

George P. Sotos,

Acting Director, for Office of Information Resources Management.

Office of Vocational and Adult Education

Type of Review: Extension.
Title: State Administered Vocational Education Improvement Projects.
Frequency: On Occasion.
Affected Public: State or local governments.
Reporting Burden:
Responses: 969.
Burden Hours: 727.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.

Abstract: This form will be used to collect data from State Departments of Vocational Education, on State administered projects for research, personnel development and curriculum development in vocational education. The Department will use this information to analyze program improvement activities of the States.

[FR Doc. 90-14522 Filed 6-21-90; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Record of Decision; Waste Isolation Pilot Plant

AGENCY: U.S. Department of Energy (DOE).

ACTION: Record of Decision, Waste Isolation Pilot Plant (WIPP).

SUMMARY: The U.S. Department of Energy (DOE) has decided to continue the phased development of the WIPP to demonstrate the safe disposal of post-1970 transuranic (TRU) waste resulting from the defense activities and programs of the United States by proceeding with the Test Phase. This Test Phase will involve emplacing, in a fully retrievable manner, a limited quantity of TRU waste underground at the WIPP to conduct tests designed to collect data to reduce uncertainties associated with performance assessment predictions that are necessary to determine whether WIPP would comply with Environmental Protection Agency (EPA) disposal standards. Before proceeding with the Test Phase, the prerequisites listed in the Secretary's Decision Plan for WIPP must be satisfactorily completed. The Test Phase also may involve an Operations Demonstration. However, a decision on whether to proceed with an Operations Demonstration as a part of the Test Phase will not be made until, and only if, the DOE has a high level of confidence in complying with the EPA disposal standards for TRU waste, and a determination were made that additional operational experience with waste is required. Prior to a decision on whether to proceed with the Disposal Phase of the WIPP, the DOE will issue another Supplemental Environmental Impact Statement (SEIS). The DOE has prepared this Record of Decision (ROD) pursuant to the regulations of the Council on Environmental Quality (40 CFR part 1505) and the DOE's Guidelines for Compliance with the National Environmental Policy Act (NEPA) (52 FR 47662, December 15, 1987).

FOR FURTHER INFORMATION CONTACT:

For further information on the WIPP, contact:
Mark W. Frei, Office of Environmental Restoration and Waste Management (EM-30), U.S. Department of Energy, Washington, DC 20545, 301/353-9469.
For further information on the NEPA process, contact:
Carol Borgstrom, Office of NEPA Project Assistance (EH-25), U.S. Department of Energy, Washington, DC 20585, 202/586-4600.

Background

The WIPP site is located in Eddy County in southeastern New Mexico. It is 26 miles east of Carlsbad in an area known as Los Medanos ("the dunes"), a relatively flat, sparsely inhabited plateau with little surface water and limited land uses. The land is used mainly for grazing, but other uses in the area include mining for potash, and oil and gas exploration and development.

The WIPP was authorized by Public Law 96–164, the "National Security and Military Applications of Nuclear Energy Act of 1980," to provide a research and development facility for demonstrating the safe disposal of radioactive waste produced by national defense activities. The DOE issued a Final Environmental Impact Statement (FEIS) on the proposed phased development of the WIPP in 1980 (DOE/EIS–0026, October 1980). The DOE's decision to construct the WIPP at a location in southeastern New Mexico was based on the FEIS and was announced in a Record of Decision (ROD) (48 FR 9162, January 28, 1981). The decision called for the phased development of the WIPP for the disposal of post-1970 defense-generated TRU waste. This decision included conducting experiments with small volumes of defense high-level waste. The DOE is no longer planning to conduct high-level waste experiments at the WIPP.

The WIPP is designed to dispose of 6.2 million cubic feet (ft^3) of contact-handled (CH) TRU waste and 250,000 ft^3 of remote-handled (RH) TRU waste in the mined repository over a 25-year operational life. TRU waste, which is waste contaminated with alpha-emitting radionuclides that are heavier than uranium and have half-lives longer than 20 years at concentrations higher than 100 nanocuries per gram or their equivalents, results primarily from defense-related plutonium reprocessing and fabrication, as well as defense-related research and development activities at various DOE facilities. TRU waste is generated and/or stored by 10 DOE defense facilities around the country. The waste exists in a variety of forms ranging from unprocessed laboratory trash (e.g., tools, glassware, and gloves) to solidified sludges from wastewater treatment. A substantial portion (approximately 60 percent) of the post-1970 TRU waste that would be emplaced in WIPP also contains hazardous chemical components. Such TRU waste (i.e., mixed waste) is similar in its physical and radiological characteristics to TRU waste that does not contain these components.

The WIPP includes surface and underground facilities that will support the emplacement of TRU waste in a geologic repository. The major construction activities at the WIPP are nearly complete; surface facilities are essentially complete, and most of the underground rooms for experimentation and for initial waste emplacement have been excavated. The principal surface structure at the WIPP is the Waste Handling Building, in which TRU waste will be received, inspected, and moved to a shaft for transfer underground. The building also contains change rooms, a health-physical laboratory, and equipment for ventilation and filtration. Other surface facilities include a fire and domestic water pumphouse, a sewage-treatment plant, a building for safety and emergency services, a guard and security building, and support buildings. The constructed underground facilities include four shafts, the first panel of the waste disposal area, an experimental area, an equipment and maintenance area, and connecting tunnels. These underground facilities were mined 2,150 feet beneath the land surface, in the Salado Formation, a 3,000-foot-thick bedded salt and anhydrite formation.

Data collected at the WIPP since completing the 1980 FEIS have led to better understanding of the hydrogeologic characteristics of the area and their potential implications for the long-term performance of the WIPP. In addition, there have been changes to the Proposed Action and in the information and assumptions used to analyze the environmental impacts in the FEIS. These changes include: (1) Changes in the composition of the TRU waste inventory, (2) consideration of the hazardous chemical constituents in TRU waste, (3) modification and refinement of the system for the transportation of TRU waste to the WIPP, and (4) modification of the Test Phase. Consistent with the regulations of the Council on Environmental Quality, a Supplement to the Environmental Impact Statement (SEIS) for the WIPP (DOE/EIS–0026–FS, January 1990) was prepared to evaluate the environmental impacts of proceeding with the phased development of the WIPP as modified by changes since 1980 and in light of new information.

In early 1989, the Department met with a variety of State agencies, environmental advocacy groups, representatives of Indian nations, elected officials, and others to inform them of the preparation of the Supplement and to solicit their suggestions regarding issues to be considered. On February 17, 1989, the DOE published in the **Federal Register** a notice of its intent to prepare a Supplement to the 1980 FEIS. The draft SEIS for WIPP (DOE/EIS–0026–DS) was issued and a Notice of Availability was published in the **Federal Register** on April 21, 1989. More than 2,000 copies of the draft SEIS were distributed to members of Congress, State and Federal agencies, and interested individuals. The DOE provided a 90-day public comment period on the draft SEIS between April 21, 1989, and July 20, 1989, that included twelve days of public hearings in nine locations nationwide. The DOE considered and responded to the comments raised by the public and by State and Federal officials during the public comment period by making appropriate changes or additions to Volumes I and II of the draft SEIS and/or by providing detailed responses in a new Volume III, Public Comments and Responses.

A Notice of Availability of the final SEIS was published in the **Federal Register** on February 2, 1990. Comments on the final SEIS were received from the EPA, the DOI, New Mexico's Environmental Evaluation Group, and jointly from the Environmental Defense Fund, Concerned Citizens for Nuclear Safety, the Office of the Texas Attorney General, and the Southwest Research and Information Center, which were subsequently adopted by the Natural Resources Defense Council. These comments were considered in preparing this ROD and were responded to individually. Copies of the comments and responses can be obtained from Mark W. Frei at the above noted address.

Alternatives Considered: A number of alternatives to the phased construction and operation of the WIPP for demonstrating the safe disposal of TRU waste were considered in the 1980 FEIS and in the January 1981 ROD. These included the No Action Alternative, the development of the authorized WIPP facility, the disposal of TRU waste in the first available repository for high-level radioactive waste, and the delayed selection of a site for the WIPP facility in order to consider additional sites. The 1981 ROD documented the DOE's decision to proceed with the phased construction of the WIPP at the Los Medanos site.

In the final SEIS, the DOE has analyzed the Proposed Action, which is to proceed with the Test Phase, and two alternatives.

Proposed Action. The Proposed Action is to continue with a phased approach to the development of the WIPP to demonstrate the safe disposal of post-1970 defense-generated TRU waste by proceeding with the Test Phase.

The Test Phase would involve transportation to and emplacement, in a fully retrievable manner, of a limited quantity of CH TRU waste underground at the WIPP to conduct bin-scale tests and alcove tests designed to provide data to reduce the uncertainties in performance assessment. The bin-scale

tests would be designed to provide information relevant to WIPP's ability to comply with EPA disposal standards for TRU waste, such as data on gas composition, gas generation and depletion rates, and the radiochemical source term. The waste used would be representative of the post-1970 TRU mixed waste inventory. Because of the potential uncertainties inherent in extrapolating from small laboratory or bin-scale results to the performance of the full-scale repository, alcove tests would be conducted in the WIPP as part of the Test Phase to validate gas-generation models and to predict realistic waste-inventory behavior. Some of the alcove tests would include waste modified to simulate the impacts of the actual repository environment on the long-term degradation behavior of the waste.

The second element of the Test Phase analyzed in the final SEIS would involve the conduct of an Operations Demonstration. The purpose of an Operations Demonstration would be to show the ability of the waste management system to safely and efficiently certify and package waste at generator/storage sites, transport waste to the WIPP, and emplace it underground. Testing and monitoring would be done on generating and storage facility operations, the transportation system, and the WIPP facility operations. These testing and monitoring activities would be designed to validate the safety and efficiency of WIPP operations and associated waste management systems under realistic conditions and at shipment rates similar to those expected during disposal operations.

The Test Phase would be conducted in accordance with the requirements of the Resource Conservation and Recovery Act (RCRA), other applicable regulations, and EPA standards for the management and storage of TRU waste (subpart A of 40 CFR part 191). To assure that the impacts for the Test Phase were conservatively assessed, the final SEIS assumed, as an upper bound assumption, that a waste volume of up to 10 percent of the design capacity of the WIPP would be used for the Test Phase.

If, during the Test Phase, there were a significant indication that the WIPP as proposed would not comply with the EPA disposal standards for TRU waste, a number of options would be considered (e.g., waste treatment and/or engineered barrier or design modifications) to facilitate demonstration of compliance with the EPA standards for disposal of TRU waste. If, after considering various options, it were determined ultimately that the WIPP still could not comply with EPA disposal standards or other applicable requirements, the waste emplaced during the Test Phase would be retrieved and placed in storage. The WIPP would be decommissioned as a facility for the demonstration of the safe disposal of TRU waste and potentially put to other uses.

No Action Alternative. Under the No Action Alternative, the DOE would not proceed with the phased development of the WIPP to demonstrate the safe disposal of post-1970 TRU waste. TRU waste would not be shipped to or emplaced in the WIPP for the Test or Disposal Phases. The WIPP would be decommissioned as a facility for the demonstration of the safe disposal of TRU waste and potentially put to other uses. Temporary storage of TRU waste at various DOE sites would continue indefinitely. Over the long-term, these storage sites would be subject to low probability natural disruptive events, as well as human intrusion, with potentially unacceptable environmental impact. Treatment of newly generated mixed waste might be required to avoid conflict with the RCRA Land Disposal Restrictions. Currently, capacity for such treatment does not exist at the DOE or at commercial facilities. The No Action Alternatve would result in the indefinite continuation of extensive TRU waste storage, site monitoring, surveillance, and maintenance.

Alternative Action. This alternative is to conduct the bin-scale tests at locations other than the WIPP underground. There would be no emplacement of TRU waste in the WIPP underground until a determination were made of compliance with the EPA standards for the disposal of TRU waste. The bin-scale tests would be conducted in a specially-engineered aboveground facility that could be constructed for this purpose. The objectives of the bin-scale tests under this alternative would be identical to those described under the Proposed Action. Since the alcove tests could not be performed practically or usefully at a location other than the WIPP underground, the results of the alcove tests would not be available to increase confidence regarding extrapolation from laboratory and bin-scale results to full-scale representative repository loading. Under this alternative, the Operations Demonstration would not be conducted prior to a determination of compliance with the EPA disposal standards for TRU waste.

Environmentally Preferable Alternative: The final SEIS has analyzed the short- and long-term environmental consequences of the No Action, the Alternative Action, and the Proposed Action alternatives. In the short-term, the environmental effects of all alternatives are small. Considering short- and long-term impacts, the DOE believes that continued development of the WIPP is the environmentally preferred alternative.

Under the No Action alternative, TRU waste would continue to be generated and stored at existing storage facilities; no waste would be emplaced in the WIPP underground. The continuation of TRU waste storage would necessitate the construction of additional waste storage and/or treatment facilities. Leaving the waste in surface over the long-term rather than disposing of it in a mined geologic repository could lead to higher radiation exposures to numbers of the general public as a result of natural processes or human intrusion if government control of the storage sites were lost.

Under the Alternative Action, only the bin-scale tests would be conducted. These tests would be conducted in a specially-engineered aboveground facility that would be constructed for this purpose at an existing waste generation and storage site. Basically the same information would be gathered from these tests as with the bin-scale experiments under the Proposed Action. However, the results of the alcove-scale tests would not be available to increase confidence regarding extrapolation of laboratory and bin-scale results to a full-scale representative repository loading. Therefore, the confidence that the performance assessment is an appropriate representation of actual repository behavior would be less than under the Proposed Action, thus lowering the confidence in a timely Disposal Phase decision.

The Proposed Action continued the phased approach to the development of the WIPP to demonstrate the safe disposal of post-1970, defense-generated TRU waste. The Proposed Action, which would include the conduct of both bin-scale and alcove tests at the WIPP, would avoid establishment of comparable facilities at other locations. The facilities needed to organize, instrument, and record the large amounts of required data are already in place at the WIPP. The Proposed Action would allow for the large-scale study of the potential interaction between the

waste (representative of the waste inventory) and the underground environment, and its effect on gas generation and other phenomena. Acquisition of this in situ data would significantly reduce the uncertainties for performance assessment to support an expeditious Disposal Phase decision with minimal environmental risk.

Decision. The DOE, in compliance with NEPA and its implementing regulations, has weighed the need for the WIPP against its environmental and other impacts as updated in the Supplement to the Environmental Impact Statement, and has decided to proceed with the Proposed Action (i.e., continue with the phased development of WIPP by proceeding with the Test Phase). This Test Phase will involve emplacing, in a fully retrievable manner, a limited quantity of TRU waste underground at the WIPP to conduct tests designed to collect data to reduce uncertainties associated with performance assessment predictions that are necessary to determine whether WIPP would comply with EPA disposal standards. Proceeding with the Test Phase is in accord with the original Congressional mandate to develop a facility to demonstrate the safe disposal of radioactive wastes produced by national defense activities. The No Action Alternative is inconsistent with this Congressional intent. The Alternative Action would not provide the same degree of certainty in the data used for conducting performance assessment to determine compliance with EPA disposal standards. This decision to continue with the phased development of the WIPP is consistent with the recently released Environmental Restoration and Waste Management Five-Year Plan (DOE/S–0070), and the DOE goal to move from waste storage to final disposal.

The DOE has considered a variety of means to avoid or minimize environmental impacts from the continued phased development of the WIPP. The DOE is committed to complying with all applicable State and Federal environmental requirements and to evaluating further the potential mitigation measures described in section 6 of the Supplement. Waste emplaced during the Test Phase will be kept to the minimum quantities needed to support the purposes of the Test Phase. The DOE will work with all States through which waste will be transported to establish comprehensive training programs for emergency response personnel. The DOE also will be conducting further studies with regard to the use of rail transport for TRU waste. The DOE will continue to work with and solicit the input of State and Federal agencies, national scientific groups, and other review groups with regard to the operation of the WIPP.

The plans for the Test Phase call for initial emplacement of approximately 0.5 percent by volume of WIPP's design waste capacity for the bin-scale tests and the alcove tests. Before proceeding with the Test Phase, the institutional and technical prerequisites listed in the Secretary's Decision Plan for the WIPP must be satisfactorily completed. Examples of those prerequisites include: land withdrawal, a final decision by EPA on the RCRA no-migration petition for the purposes of testing and experimentation, and completion of the Final Safety Analysis Report (FSAR) and an FSAR Addendum that specifically analyzes safety at the WIPP during the Test Phase.

Review of the April 1989 proposed Operations Demonstration program by the National Academy of Sciences, New Mexico's Environmental Evaluation Group, the EPA, the Blue Ribbon Panel, and the Advisory Committee on Nuclear Facility Safety resulted in a variety of major comments being provided to the DOE. The comments primarily focused on the timing of the proposed program relative to a determination of compliance with the EPA disposal standards for TRU waste, and on the scope (i.e., quantities of waste and the rates at which it is received) relative to the operational experience to be gained from the performance assessment test program. Based on a reevaluation of the proposed Operations Demonstration, the DOE has decided that a decision on whether to proceed with an Operations Demonstration as part of the Test Phase should not be made until a high-level of confidence in complying with the EPA disposal standards has been achieved and a determination is made that additional operational experience with waste is required. The following activities must be completed before DOE can make a decision on the scope of the Operations Demonstration program (i.e., a determination of whether additional operational experience with waste is required):

(1) An evaluation of the feasibility of the EPA recommendation of monitoring the performance of the facility by emplacing waste (approximately 1.5 percent of design capacity) in 2 full-scale, instrumented, backfilled, sealed rooms after a satisfactory demonstration of retrieval using simulated wastes;

(2) Establishment of systems objectives and criteria for evaluating disposal operations readiness; and,

(3) A preliminary report is issued on operational experience gained from the handling and emplacement of TRU waste for the performance assessment tests and an assessment of this experience relative to the pre-established system objectives and criteria for WIPP disposal operations readiness.

The need for additional NEPA documentation will be evaluated during the Test Phase. Prior to a decision on whether to proceed to the Disposal Phase, the DOE will issue a second SEIS. The second Supplemental EIS will analyze the long-term performance of the WIPP in light of information generated during the Test Phase and will analyze in more detail the impacts of processing and handling TRU waste at each of the generator/storage facilities for shipment to the WIPP for disposal, including the impacts of any proposed waste treatment.

Proceeding with the Test Phase at the WIPP requires the receipt of TRU waste at the WIPP facility. Public Land Order 6403, issued in 1983, under which the DOE is currently developing the WIPP facility, does not allow the receipt of radioactive waste on the site. The DOE would prefer that the withdrawal of the WIPP site lands be made by Congress rather than continuing to acquire use of the lands through administrative means. Accordingly, the DOE submitted on April 3, 1990, a proposed bill to the Congress, which would provide for the withdrawal of the WIPP site lands. However, in order to continue the phased development of the WIPP in a manner consistent with Public Law 96–164, the DOE also is requesting that the Secretary of the Interior support a parallel option of administrative land withdrawal by modifying the current Public Land Order to allow the receipt of waste at the WIPP for the Test Phase in the event that the Congress does not enact land withdrawal legislation.

Issued at Washington, DC this 13th day of June, 1990.

Approved:

James D. Watkins,

Admiral, U.S. Navy (Retired), Secretary of Energy.

[FR Doc. 90–14509 Filed 6–21–90; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent To Award grant to Pickard Line-Up Boom Assoc.

AGENCY: U.S. Department of Energy.

ACTION: Notice of unsolicited assistance award.

SUMMARY: The Department of Energy announces that pursuant 10 CFR 600.14, it is making a financial assistance award under Grant Number DE–FG01–90CE15476 to Pickard Line-Up Boom Associates to assist in the building and testing of the Pickard Line-Up Boom.

SCOPE: This grant will aid in providing funding in the amount of $80,000 to build an advanced prototype of the Boom and to enable it to be tested under field conditions by pipeline contractors in the Tulsa area. The system is a tractor-mounted system for handling large pipes, up to 4-ft. diameter, used in building cross-country oil and gas pipelines. The Pickard Boom controls and stabilizes the pipe, prevents swinging, and allows it to be moved and positioned precisely in any direction, vertically or horizontally, and at less hazard to personnel laying the pipe. The invention represents a marked change in design that is anticipated to result in a definite improvement.

ELIGIBILITY: Eligibility of this award is being limited to Pickard Line-Up Boom Associates. Mr. Kenneth Pickard, inventor and president, has worked for 50 years in the pipeline industry as a welder, welding foreman, welding inspector, welding instructor and pipeline superintendent. Mr. Pickard's company will be the licensor of this new system for ultrasonic inspection of oil country tubulars. It has been determnined that this is a project with a high technical merit, representing an innovative technology that has a strong possibility of adding to the national energy resources.

The term of this grant shall be for eighteen months from the effective date of award.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 90–14510 Filed 6–21–90; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 90–41–NG]

ANR Pipeline Co.; Application for Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an application for blanket authorization to import natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on May 11, 1990, of an application filed by ANR Pipeline Company (ANR), requesting blanket authority to import up to 100 Bcf of Canadian natural gas over a two-year term beginning on or about November 1, 1990 for short-term, spot-market sales, for compression fuel, and pipeline losses associated with transportation arrangements. ANR intends to use existing facilities for the transportation of the imported natural gas. ANR also proposes to submit reports to FE within two weeks after the first delivery of the natural gas and quarterly reports 30 days after the end of each calendar quarter giving the full details of the individual transactions.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., July 23, 1990.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, FE–50, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Allyson C. Reilly, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586–6667.

SUPPLEMENTARY INFORMATION: ANR, a Delaware corporation, has been organized for the purposes of purchasing, transporting, storing and selling natural gas in interstate commerce. ANR requests authority to import competitively priced natural gas from Canadian producers for resale to existing U.S. customers, for injection into storage for future withdrawal and resale, or for use as compression fuel and pipeline losses associated with transportation arrangements through the pipeline systems of Viking Gas Transmission Company and Great Lakes Transmission Company.

The decision on the application for import authority will be made consistent with the DOE's natural gas import policy gudelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comments in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement will be competitive and thus in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), (42 U.S.C. 4321, et seq.) requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application.

All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact,

law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of ANR's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC June 18, 1990.

Clifford P. Tomaszewski

Acting Deputy Assistant, Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–14508 Filed 6–21–90; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 90–52–NG]

Granite State Gas Transmission, Inc.; Application for Blanket Autorization to Import Natural Gas from Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on May 22, 1990, of an application filed by Granite State Gas Transmission, Inc. (Granite State), for blanket authorization to import up to 25 Bcf of Canadian natural gas over a two-year period beginning on the date of first delivery. Granite State would use existing pipeline facilities for the importation and transportation of the requested volumes. In addition, Granite State intends to notify DOE of the date of first delivery of the proposed volumes within two weeks after deliveries begin and would submit quarterly reports giving details of individuals transactions.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., July 23, 1990.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy Forrestal Building, Room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Lot Cooke, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8116.

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATIONL: Granite State, a New Hampshire corporation, is an interstate natural gas pipeline company which is wholly owned by Northern Utilities, Inc. (Northern Utilities), also a New Hampshire corporation, which operates gas distribution companies in New Hampshire and Maine. Northern Utilities is a wholly owned subsidiary of Bay State Gas Company (Bay State), a Massachusetts natural gas distribution company. Granite State's principal buisiness is to supply Northern Utilities and Bay State with firm supplies of both Canadian and domestic natural gas. In addition, Granite State purchases substantial quantities of domestic natural gas on the spot market for sale to Northern Utilities and Bay State.

Granite State proposes to utilize the requested blanket authorization to purchase and import natural gas from a variety of Canadian suppliers at competitive prices for its system supply for resale to Northern Utilities and Bay State. The purchases would be interruptible and the price for the gas would be negotiated based on prevailing market prices. Any imports under the proposed blanket authorization would utilize existing pipeline capacity and no new construction would be required.

The decision on the application for import authority will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement will be competitive and thus in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act NEPA (42 U.S.C. 4321 *et seq.*) requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additioanl written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial questions of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request

for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trail-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, a notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Granite State's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on June 18, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–14513 Filed 6–21–90; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 90–44–NG]

Northwest Natural Gas Co.; Application for Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on May 14, 1990, of an application filed by Northwest Natural Gas Company (NNG) requesting blanket authorization to import up to 30 Bcf of Canadian natural gas over a two-year period beginning on the date of first delivery. The proposed gas imports would be transported form the border between the United States and Canada on the Pacific Gas Transmission Company (PGT)/Pacific Gas and Electric Company (PG&E) Expansion Project for which an application for a Certificate of Public Convenience and Necessity (CP89–460) has been filed and is pending at the Federal Energy Regulatory Commission (FERC). NNG agrees to make quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., July 23, 1990.

ADDRESSES: Office fo Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, FE–50, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

John S. Boyd, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4523

Michael T. Skinker, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: NNG, an Oregon corporation with its principal place of business in Portland, Oregon, is a local distribution company that serves approximately 310,000 residential, commercial, and industrial customers in Oregon and southwest Washington. The company proposes to import natural gas from various Canadian suppliers for sale to residential, commercial, and industrial customers in NNG's service territory in the states of Oregon and Washington. NNG would import gas on its own behalf, as well as on behalf of suppliers and purchasers for whom it might act as agent. If the requested authorization is granted, the gas would be transported through facilities in Canada belonging to NOVA Corporation, Foothills Pipeline Corporation, Ltd., and Alberta Natural Gas Company to the point of entry near Kingsgate, British Columbia, on the international border between the United States and Canada at the interconnection with the proposed PGT–PG&E Expansion Project. Northwest Pipeline Corporation would transport the gas from its interconnection with PGT pipeline to NNG's facilities in Oregon and Washington.

NNG states that the proposed import transactions would be conducted on a short-term basis while longer term agreements are negotiated. When such agreements are finally completed, NNG states it contemplates filing additional applications for authority to import gas pursuant to the provisions of specific contract arrangements.

In support of its application, NNG asserts that the gas imported under its gas purchase contracts would be with producers and aggregators having access to substantial or developmental reserves and that Canada is a reliable source of supply. NNG maintains that the proposed import transactions are premised upon the gas being competitive in the U.S. market. It asserts that gas purchase contracts will be competitive because they will be voluntarily negotiated at arms length having market-responsive contract terms. Prices will be determined on the basis of competitive factors in the gas market. NNG states that its service territory is served by Northwest pipeline, giving NNG access to other suppliers in the U.S. and Canada. Given the availability of competing suppliers, NNG asserts that customers will not purchase imported gas unless it is needed and the price is competitive. Additionally, the company maintains that the importation of competitively priced Canadian gas would augment the supply of competitively priced gas available to U.S. consumers, furthering the Secretary's policy encouraging competitive and market responsive pricing.

The decision on this application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties, especially those that may oppose the application should comment in their responses on the matters as they relate to the requested import authority. The applicant asserts that the import arrangement will be competitive and in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act NEPA (42 U.S.C. 4321 *et seq.*) requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person

wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590.

It is intended that a decisional record will be developed on the applciation through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures by provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, a notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of NNG's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on June 18, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary For Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-14514 Filed 6-21-90; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 90-45-NG]

Pancontinental Oil Ltd.; Application for Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on May 14, 1990, of an application filed by Pancontinental Oil Ltd., (Pancontinental) requesting blanket authorization to import up to 8 Bcf of Canadian natural gas over a two-year period beginning on the date of first delivery. The proposed gas imports would be transported from the border between the United States and Canada on the Pacific Gas Transmission Company (PGT)/Pacific Gas and Electric Company (PG&E) Expansion Project for which an application for a Certificate of Public Convenience and Necessity (CP89-460) has been filed and is pending at the Federal Energy Regulatory Commission (FERC). Pancontinental agrees to make quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., July 23, 1990.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, FE-50, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

John S. Boyd, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4523

Michael T. Skinker, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Pancontinental, an Alberta corporation with its principal place of business in Calgary, Alberta, Canada, is engaged in oil and gas exploration, development, production and marketing. The company proposes to import its own supplies of natural gas from a variety of reliable Canadian supply sources for sale to local distribution companies, municipalities and end-users in California and the Pacific Northwest. Pancontinental would import gas on its own behalf, as well as on behalf of suppliers and purchasers for whom it might act as agent. If the requested authorization is granted, the gas would be transported through the following facilities: (1) New/existing facilities in Canada belonging to NOVA Corporation of Alberta, Foothills Pipelines, Ltd., Alberta Natural Gas Company and Westcoast Energy Inc. (2) new/existing facilities in the U.S. belonging to Northwest Pipeline Company, and PGT and PG&E including the proposed PGT-PG&E Expansion Project; and (3) local distribution company facilities in the Pacific Northwest and California. The points of entry will be near Huntingdon and Kingsgate, British Columbia on the international boundary between the United States and Canada.

Pancontinental states that the proposed import transactions would be conducted on a short-term basis pursuant to market-responsive contract terms, while a longer term agreement is negotiated. When the long-term agreement is completed, Pancontinental states it will file an additional application for authority to import that natural gas.

In support of its application, Pancontinental asserts that the proposed gas imports would be limited to a term of two years and that Canada is a reliable supply source. Pancontinental maintains that the proposed import transactions are premised upon the gas being competitive in the U.S. market. It asserts that gas purchased contracts will be competitive because they will be voluntarily negotiated at arms length having market-responsive contract terms. Prices will be determined on the basis of competitive factors in the gas market. Given the availability of competing suppliers, Pancontinental asserts that neither it nor its customers will purchase imported gas under the requested authorization unless it is needed and the price is competitive. Additionally the company maintains that the importation of competitively priced Canadian gas will advance the policy goals of reducing trade barriers by augmenting the supply of

competitively priced gas available to U.S. consumers.

The decision on this application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties, especially those that may oppose the application should comment in their responses on the matters as they relate to the requested import authority. The applicant asserts that the import arrangement will be competitive and in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act NEPA (42 U.S.C. 4321 *et seq.*) requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trail-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trail-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, a notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Pancotinental's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on June 18, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary For Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–14515 Filed 6–21–90; 8:45 am]

BILLING CODE 6450–01–M

Amendment to Existing Knolls Atomic Power Laboratory Designation of Property as Off-Limits Area

AGENCY: Department of Energy.

ACTION: Amendment to the Existing Designation of Knolls Atomic Power Laboratory property in Niskayuna, New York, as an off-limits area in accordance with 10 CFR part 860.

SUMMARY: The Department of Energy (DOE) hereby amends the existing designation of the Knolls Atomic Power Laboratory Niskayuna Site as an off-limits areas in accordance with 10 CFR part 860, making it a Federal crime under 42 U.S.C. 2278a for unauthorized persons to enter into or upon the Knolls Atomic Power Laboratory Niskayuna Site.

Amending a previous notice published in the Federal Register on October 19, 1965 (30 FR 13280), notice is hereby given that DOE, pursuant to section 229 of the Atomic Energy Act of 1954, as amended, and 42 U.S.C. 2278a, as implemented by 10 CFR part 860 published in the Federal Register on July 9, 1975 (40 FR 28789), prohibits the unauthorized entry, as provided in 10 CFR 860.3, and the unauthorized introduction of weapons or dangerous materials, as provided in 10 CFR 860.4, into or upon the Knolls Atomic Power Laboratory Niskayuna Site of the DOE. Said site has been expanded to include a tract of land located in the Town of Niskayuna, County of Schenectady, State of New York, approximately five miles E.N.E. from the main business district of Schenectady, New York, and being more particularly described as follows:

The property bounds shall start at a concrete monument on the existing property line between the Knolls Atomic Power Laboratory and General Electric Company's Research and Development Center, which monument is located approximately 25 feet northwest of the center line of the road leading to the lower level of the Knolls Atomic Power Laboratory from River Road and 230 feet southwest of the center line of the main road entering the lower level. A second concrete monument is located 90.56 feet from this first monument on a bearing of S72° –00′ –44″W. Beginning at the first monument, the property bounds proceed 285.00 feet on a bearing of N39° –18′ –14″W to a point, then 400.03 feet on a bearing of N56° –59′ –14″E to a point of the bank of the Mohawk river, then shall follow the bank of the river 194.14 feet on a bearing of S68° –00′ –46″E to a point on the existing property line between the Knolls Atomic Power Laboratory and the General Electric Company where the line turns to follow this boundary 295 feet on a bearing of S56° –59′ –14″W, then 125 feet on a bearing of S39° –18′ –14″E, then 198.87 feet on a bearing of S56° –59′ –14″W, to a point of beginning for this survey; the whole containing two and twenty-hundredths (2.2) acres, more or less.

Notices stating the pertinent prohibitions of 10 CFR 860.3 and 860.4 and penalties of 10 CFR 860.5 will be posted at all entrances of said tract and at intervals along its perimeter as provided in 10 CFR 860.6.

Issued in Washington, DC on June 6, 1990.

Donald F. Knuth,

Acting Deputy Assistant Secretary for Operations, Defense Programs.

[FR Doc. 90–14512 Filed 6–21–90; 8:45 am]

BILLING CODE 6450–01–M

Revision to the Existing Knolls Atomic Power Laboratory Windsor Site Operation Designation As Off-Limits Area

AGENCY: Department of Energy.

ACTION: Amendment to the Existing Designation of the Knolls Atomic Power Laboratory property in Windsor, Connecticut, as an off-limits area in accordance with 10 CFR part 860.

SUMMARY: The Department of Energy (DOE) hereby amends the existing designation of the Knolls Atomic Power Laboratory Windsor Site as an off-limits area in accordance with 10 CFR part 860, making it a Federal crime under 42 U.S.C. 2278a for unauthorized persons to enter into or upon the Knolls Atomic Power Laboratory Windsor Site.

Amending a previous notice published in the **Federal Register** on October 19, 1965 (30 FR 13292), notice is hereby given that DOE, pursuant to section 229 of the Atomic Energy Act of 1954, as amended, and 42 U.S.C. 2278a as implemented by 10 CFR part 860 published in the **Federal Register** on July 9, 1975 (40 FR 28789), prohibits the unauthorized entry, as provided in 10 CFR 860.3, and the unauthorized introduction of weapons or dangerous materials, as provided in 10 CFR 860.4, into or upon the Knolls Atomic Power Laboratory Windsor Site of DOE, said site being a track of land located in Windsor, Connecticut, County of Hartford, State of Connecticut, approximately 5 miles WNW from Windsor, Connecticut, one-fourth mile S of the Farmington River and one-half mile N of the intersection of Prospect Hill and Day Hill Roads and being more particularly described as follows:

Beginning at a point, which point of beginning is the south-easterly corner of the land is located the following courses and distances from a point on the northerly side of Prospect Hill Road, which point on Prospect Hill Road is also the southeasterly corner of land of Combustion Engineering, Inc., and the south westerly corner of land now or formerly of Herbert J. Nolan; N 28° 55'25"E a distance of 1,181.74 feet; S 65 10'54"E a distance of 151.8 feet; N 26° 46'51"E a distance of 588.1 feet; N 24° 48'50"E a distance of 2,158.1 feet; N 56 15'11"W a distance of 1,682.33 feet to the point of beginning which is recorded as a concrete monument "B" having horizontal grid coordinates of N 195, 698.02, E 158, 703.87 as recorded to the Metropolitan District Commission Datum:

Thence, N 10 25'04"E from the point of beginning a distance of 449.19 feet to a point;

Thence, N 34 25'30"W a distance of 131.97 feet to a point;

Thence, N 56 56'36"W a distance of 449.20 feet to a point;

Thence. S 60 12'24"W a distance of 105.14 feet to a point;

Thence, S 32 38'39"W a distance of 467.32 feet to a point;

Thence, S 09 32'01"E a distance of 266.96 feet to a point;

Thence, S 74 32'21"E a distance of 693.02 feet to a point;

Thence N 10 24'04"E a distance of 65.25 feet to a point of beginning, said site containing 10.81 acres, more or less. All bearings are referenced to a magnetic north which is 13 −07'31"W of the grid north of the Metropolitan District Commission Datum.

Notices stating the pertinent prohibitions of 10 CFR 860.3 and 860.4 and penalties of 10 CFR 860.5 will be posted at all entrances of said tract and at intervals along its perimeter as provided in 10 CFR 860.6.

Issued in Washington, DC on June 6, 1990

Donald F. Knuth,

Acting Deputy Assistant Secretary for Operations Defense Programs.

[FR Doc. 90-14511 Filed 6-21-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP90-1454-000, et al.]

Northwest Pipeline Corp., et al.; Natural Gas Certificate Filings

June 13, 1990.

Take notice that the following filings have been made with the Commission:

1. Northwest Pipline Corporation

[Docket No. CP90-1454-000]

Take notice that on May 30, 1990, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP90-1454-000 a request, as supplemented on June 11, 1990, pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212), for authorization to operate and utilize the Van der Salm Meter Station for the delivery of sales gas to Northwest Natural Gas Company (Northwest Natural), and to reallocate a portion of its maximum daily delivery obligation, under Northwest's blanket certificate issued in Docket No. CP82-433-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest states that it was authorized on March 14, 1990, in Docket No. CP89-1740-000 to provide firm Rate Schedule ODL-1 gas sales service to Northwest Natural under an agreement dated May 15, 1989. Northwest further states that firm sales to Northewest Natural at the Van der Salm Meter Station would be under Northwest's ODL-1 Rate Schedule. It is stated that the gas provided at the Van der Salm Meter Station would be utilized to heat the Van der Salm bulb farm, a new firm sales end-user of Northwest Natural. Northwest further states that Northwest Natural has committed to provide service to the end-user commencing August 1, 1990, so that the end-user would not have to install alternate fuel heating capability. Northwest also proposes to reallocate 500 therms of the existing maximum daily delivery obligation from Multnomah County, Oregon, to the Van der Salm Meter Station.

Comment date: July 30, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. Columbia Gulf Transmission Company

[Docket Nos. CP90-1515-000, CP90-1516-000, CP90-1517-000, CP90-1518-000, CP90-1519-000, CP90-1520-000, CP90-1521-000]

Take notice that Columbia Gulf Transmission Company, 3805 West Alabama, Houston, Texas 77027 (Applicant), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-239-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: July 30, 1990, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP90-1515-000 (6-11-90)	NGC Transportation, Inc. (Marketer).	200,000 100,000 36,500,000	OLA, LA, TX	LA, TX, TN, MS	5-23-88 [3] ITS-1,2, Interruptible.	ST90-3125-000, 5-1-90
CP90-1516-000 (6-11-90)	Conoco Inc. (Producer)	75,000 15,000 5,475,000	OLA	LA	2-10-89, ITS-2, Interruptible.	ST90-3121-000, 5-1-90
CP90-1517-000 (6-11-90)	Nortech Energy Corp. (Marketer).	25,000 10,000 3,650,000	LA	LA	3-1-90, ITS-2, Interruptible.	ST90-3126-000, 5-8-90
CP90-1518-000 (6-11-90)	Kentucky Electric Steel Corp. (End user) (Marketer).	3,000 1,000 365,000	OLA	LA	4-25-90 ITS-2, Interruptible.	ST90-3116-000, 5-1-90
CP90-1519-000 (6-11-90)	Shell Offshore, Inc. (Producer).	50,000 10,000 3,650,000	OLA	LA	4-1-87 ITS-2, Interruptible.	ST90-3115-000, 5-1-90
CP90-1520-000 (6-11-90)	Louis Dreyfus Energy Corp. (Marketer).	50,000 10,000 3,650,000	OLA	LA	4-23-90 ITS-2, Interruptible.	ST90-3122-000, 5-1-90
CP90-1521-000	Coastal Gas Marketing Co. (Marketer).	25,000 25,000 9,125,000	LA	LA	12-15-89 FTS-2 Firm.	ST90-3123-000, 5-1-90

[1] Offshore Louisiana is shown as OLA.
[3] Columbia's proposal involves two contracts, both of which have been amended. The ITS-2 agreement is dated May 23, 1988, and the ITS-1 agreement is dated September 1, 1989.

3. Northern Border Pipeline Company

Docket Nos. CP90-1522-000, CP90-1523-000, CP90-1524-000, CP90-1525-000

Take notice that on June 11, 1990, Northern Border Pipeline Company (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in the above referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-395-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: July 30, 1990, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No. (Date Filed)	Shipper name	Peak Day [2], average day, annual	Receipt [3] points	Delivery points	Start up date, rate schedule, service type	Related [4] docket contract date
CP90-1522-000 (6-11-90)	Energy Dynamics, Inc.	60,000 16,000 21,900,000	MT, ND	SD, MN, IA	4-27-90, IT-1, Interruptible.	ST90-3192-000, 12-27-89
CP90-1523-000 (6-11-90)	Mock Resources, Inc.	500,000 500,000 182,500,000	MT, ND	SD, MN, IA	4-27-90, IT-1, Interruptible.	ST90-3193-000, 1-19-90
CP90-1524-000 (6-11-90)	Exxon Corporation	150,000 150,000 54,750,000	MT, ND	MN, IA, ND, SD	4-26-90, IT-1, Interruptible.	ST90-3189-000, 1-1-88
CP90-1524-000 (6-11-90)	Mobil Natural Gas, Inc.	30,000 30,000 10,950,00	MT	IA	4-26-90, IT-1, Interruptible.	ST90-3194-000, 12-10-87

[2] Quantities are shown in MMBtu.
[3] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[4] If an ST docket is shown, 120-day transportation service was reported in it.

4. Equitrans, Inc.

[Docket Nos. CP90–1503–000 [3], CP90–1504–000

Take notice that on June 7, 1990, Equitrans, Inc. (Equitrans), 4955 Steubenville Pike, Pittsburgh, Pennsylvania 15205 filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under Equitran's blanket certificate issued in Docket No. CP86–553–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Equitrans and is included in the attached appendix.

Equitrans also states that it would provide the service for each shipper under an executed transportation agreement, and that Equitrans would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: July 30, 1990, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name, contract no.	Peak day, [1] Avg, Annual	Points of		Start up date, rate schedule	Related dockets
			Receipt	Delivery		
CP90–1503–000	Transport Gas Corp., ITS–106.	294 215 51,600	WV	PA	5/1/90, ITS	ST90–3135–000
CP90–1504–000	Columbia Gas of PA, Inc., ITS–101.	29,400 18,026 3,200,000	PA, WV	PA, WV	4/2/90, ITS	ST90–2679–000

[1] Quantities are shown in Mcf unless otherwise indicated.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90–14454 Filed 6–21–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP90–1530–000, et al.]

Texas Gas Transmission Corp.; et al.; Natural Gas Certificate Filings

June 14, 1990.

Take notice that the following filings have been made with the Commission:

1. Texas Gas Transmission Corporation

[Docket Nos. CP90–1530–000; CP90–1531–000]

Take notice that on June 12, 1990, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regualtions under the Natural Gas Act for authorization to transport natural gas on behalf of two shippers under Texas Gas' blanket certificate issued in Docket No. CP88–686–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Texas Gas and is summarized in the attached appendix.

Texas Gas states that each of the proposed services would be provided under an executed transportation agreement, and that Texas Gas would charge the rates and abide by the terms and conditions of the appropriate transportation rate schedule. It is asserted that both transportation services would be carried out on an interruptible basis. It is further asserted that existing facilities would be used for the transportation services and no construction of additional facilities would be required. It is explained that the gas would be received by Texas Gas at designated points on their systems and would be delivered for the shippers' accounts at designated points of interconnection.

Comment date: July 30, 1990, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Appendix

Docket number	Shipper name	Peak day [2] avg, annual	Start-up date	Related [3] Dockets
CP90-1530-000	Centran Corporation	30,000 23,000 9,125,000	5/2/90	ST90-2948.
CP90-1531-000	Coastal Gas Marketing Company	200,000 150,000 54,750,000	5/3/90	ST90-2949.

[2] Quantities are shown in MMBtu equivalent.
[3] Texas Gas reported its 120-day transportation service in the referenced ST dockets.

2. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP90-1514-000]

Take notice that on June 11, 1990, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed a request with the Commission in Docket No. CP90-1514-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to transport natural gas on behalf of Transok Ventures Company (Transok), a natural gas marketer, under Northern's blanket certificate issued in Docket No. CP86-435-000, pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

Northern proposes an interruptible natural gas transportation service up to 80,000 MMBtu equivalent per peak day, 60,000 MMBtu equivalent per average day, and 29,200,000 MMBtu equivalent per year for Transok. Northern would receive and deliver gas at various points on its system for Transok's account. Northern commenced its transportation service for Transok on April 7, 1990, under the self-implementing authorization provisions of § 284.223(a) of the Regulations, as reported in Docket No. ST90-2702.

Comment date: July 30, 1990, in accordance with Standard Paragraph G at the end of this notice.

3. Tennessee Gas Pipeline Company, Midwestern Gas Transmission Company

[Docket Nos. CP90-1526-000, CP90-1527-000, CP90-1528-000]

Take notice that on Applicants filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificate issued in Docket No. CP89-1121-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: July 30, 1990, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Applicant: Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252

Blanket Certificate Issued in Docket No.: CP87-115-000

Docket number (date filed)	Shipper name	Peak day [2] avg. annual	Points of		Start up date rate schedule	Related [3] dockets
			Receipt	Delivery		
CP90-1526-000 (06-11-90)	Kentucky Electric Steel Corporation.	1,800 1,800 657,000	Offshore LA	KY	5-01-90, FT-A	ST90-3239-000.
CP90-1527-000 (06-11-90)	Kidder Exploration, Inc.	650 650 237,250	PA	PA	5-19-90, IT	ST90-3276-000.

Applicant: Midwestern Gas Transmission Company P.O. Box 2511, Houston, Texas 77252

Blanket Certificate Issued in Docket No.: CP90-174-000

Docket number (date filed)	Shipper name	Peak day [2] avg. annual	Points of		Start up date rate schedule	Related [3] dockets
			Receipt	Delivery		
CP90-1528-000 (06-11-90)	Superior Natural Gas Corporation.	25,000 25,000 9,125,000	LA, TX, MS, PA, KY, AL, MA, offshores LA and TX.	IL, IN	5-12-90, IT	ST90-3231-000.

[2] Quantities are shown in dekatherms unless otherwise indicated.
[3] If an ST docket is shown, 120-day transportation service was reported in it.

4. Natural Gas Pipeline Company of America, Trunkline Gas Company, Trunkline Gas Company, Tennessee Gas Pipeline Company

Docket Nos. CP90-1507-000, CP90-1508-000, CP90-1509-000, CP90-1510-000

Take notice that on June 8, 1990, the above listed companies filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[3]

A summary of each transportation service which includes the shippers identity, the peak day, average day and annual volumes, the receipt point(s), the delivery point(s), the applicable rate schedule, and the docket number and service commencement date of the 120-day automatic authorization under § 284.223 of the Commission's Regulations is provided in the attached appendix.

Comment date: July 30, 1990, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket number (date filed)	Applicant	Shipper name contract No.	Peak day [1] avg. annual	Points of		Start up date rate schedule	Related [2] Dockets
				Receipt	Delivery		
CP90-1507-000(6-8-90)	Natural Gas Pipeline Company of America.	Tejas Hydrocarbons Company.	65,000 20,000 7,300,000	Offshore TX, TX LA	TX	4-6-90, ITS	CP86-582-000, ST90-2925-000.
CP90-1508-000(6-8-90)	Trunkline Gas Company.	Texaco, Inc.	20,000Mcf. 20,000Mcf. 7,300,000Mcf.	Offshore LA	LA	4-1-90, PT	CP86-586-000, ST90-3170-000.
CP90-1509-000(6-8-90)	Trunkline Gas Company.	Amoco Production Company.	30,000Mcf. 30,000Mcf. 10,950,000Mcf.	Offshore LA	LA	4-1-90, PT	CP86-586-000, ST90-3168-000.
CP90-1510-000(6-8-90)	Tennessee Gas Pipeline Company.	Harbert Oil & Gas Corporation.	50,000Dt. 50,000Dt. 18,250,000Dt.	Offshore LA, LA TX, MS	LA, MS TN, MA PA, KY	5-3-90, ITS	CP87-115-000, ST90-3210-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket trasnsportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90-14455 Filed 6-21-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-1-46-025]

Kentucky West Virginia Gas Co.; Amended Compliance Filing

June 15, 1990.

Take notice that on June 14, 1990, Kentucky West Virginia Gas Company (Kentucky West) filed certain revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective July 1, 1990. Kentucky West states that these tariff sheets are filed in compliance with the Commission's order of March 15, 1989.

Kentucky West states that it is amending its March 30, 1989 compliance filing to address the operation of the proposed direct billing provisions of its tariff concerning any party with whom Kentucky West has reached a settlement agreement (settling party). Kentucky West states that the amended tariff sheets provide that the proposed direct billing provisions of its tariff will not be applied to any settling party pending Commission approval of the settlement related to that settling party. Kentucky West states that these tariff sheets also provide that the same treatment will be accorded any future settlements in these proceedings agreed to by Kentucky West and any party.

Kentucky West requests waiver of § 154.22 of the Commission's regulations and any other regulations necessary to permit the tariff sheets to become effective on July 1, 1990.

Kentucky West states that it has served copies of this filing to its jurisdictional customers, interested staff commissions and parties on the service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989).) All such motions or protests should be filed on or before June 22, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-14456 Filed 6-21-90; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3790-2]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075. Availability of Environmental Impact Statements Filed June 11, 1990 Through June 15, 1990 Pursuant to 40 CFR 1506.9.

EIS No. 900201, Draft, AFS, MT, Bitterroot National Forest Noxious Weed Control Program, Use of Herbicide on Eight Sites, Implementation, Ravilli County, MT, Due: August 6, 1990, Contact: B. John Losensky (406) 329–3819.

EIS No. 900202, Draft, AFS, CA, Goleta and Gaviota Substations 66–kv Transmission Line Construction, Phase I, Goleta Substation to Exgen Substation in Las Flores Cányon, Santa Barbara County, CA, Due: August 6, 1990, Contact: Paul Barker (705) 705–2870.

EIS No. 900203, Final, FHW, OK, East 71st Street South Reconstruction, South Lewis Avenue to South Memorial Drive, Funding, City and County of Tulsa, OK, Due: July 23, 1990, Contact: Bruce A. Lind (405) 231–4624.

EIS No. 900204, Draft, AFS, MT, South Fork Complex Timber Sales Road Construction/Reconstruction, Implementation, Lewis and Clark National Forest, Judith Ranger District, Judith Basin County, MT, Due: August 6, 1990, Contact: Jerome E. Dombrovske (406) 566–2292.

EIS No. 900205, Draft, USN, NV, Naval Air Station Fallon Geothermal Resources for Electrical Power Generation Phase I and II Development, Section 404 and Right-of-Way Permits, Churchill County, NV, Due: August 6, 1990, Contact: Dr. Francis Monastero (619) 939–3411.

EIS No. 900206, Final, BLM, UT, USPCI Clive Transfer/Storage/Incineration Facility and Associated Transportation/Utility Corridors, Construction and Operation, Right-of-Ways and/or Land Exchange, Tooele County, UT, Due: July 23, 1990, Contact: Ernie Eberhard (801) 977–4300.

EIS No. 900207, Final, FHW, CA, CA–237 Upgrading to Freeway Standards, Mathilda Avenue to I–880, Funding and 404 Permit, Santa Clara County, CA, Due: July 23, 1990, Contact: Glenn Clinton (916) 551–1314.

EIS No. 900208, Draft, COE, KS, Cross Creek Flood Protection Plan, Section 205 Small Flood Control Project, Implementation, City of Rossville, Shawnee County, KS, Due: August 7, 1990, Contact: Martin Schuettpelz (816) 426–5063.

EIS No. 900209, Draft, APH, Nationwide Cooperative Animal Damage Control Program, Integrated Pest Management Approach, Implementation, Due: August 31, 1990, Contact: Gary E. Larson (301) 436–8281.

EIS No. 900210, Draft, USN, CA, P–202 Naval Air Station Alameda and P–082 Naval Supply Center Oakland Dredging Project, Implementation, Section 404 Permit, Alameda and Oakland Cities, San Francisco Bay, CA, Due: August 6, 1990, Contact: Dr. Ronald Hudson (415) 877–7695.

EIS No. 900211, Draft, AFS, NM, Ward Timber Sale, Implementation, Gila National Forest, Luna Ranger District, Catron County, NM, Due: August 6, 1990, Contact: Jerry Hibbetts (505) 547–2611.

EIS No. 900212, Final, FRC, NY, MN, WI, MI, MA, RI, Niagara Import Point Project, Natural Gas Pipeine Facilities, Construction and Operation, Licenses, Section 10 and 404 Permits, NY, WI, MA, MN, MI, and RI, Due: July 23, 1990, Contact: Lonnie Lister (202) 208–2191.

EIS No. 900213, Draft, COE, LA, Comite River Basin and Tributaries Flood Protection Plan, Implementation, Amite River Basin, Baton Rouge and Livingston Parishes, LA, Due: August 6, 1990, Contact: Bill Wilson (504) 862–2527.

Amended Notices

EIS No. 900071, Draft, AFS, CA, Shasta-Trinity National Forests, Land and Resource Management Plan, Implementation, Humboldt, Modoc, Shasta, Siskiyou, Tehama and Trinity Counties, CA, Due: July 7, 1990, Contact: Robert R. Tyrrel (916) 246–5222. Published FR 3–09–90—Review period extended.

EIS No. 900150, Draft, SFW, CA, Seal Beach National Wildlife Refuge and Seal Beach Naval Weapons Station Endangered Species Management and Protection Plan, Development and Implementation, Orange County, CA, Due: July 17, 1990, Contact: Charles S. Houghter (916) 978–4420. Published FR—05–18–90—Incorrect due date.

EIS No. 900198, Draft, MMS, AK, 1991 Norton Sound Outer Continental Shelf (OCS) Lease Sale, Placer Mining Program, Implementation and Lease Offerings, AK, Due: July 30, 1990, Contact: George Valiulis (703) 787–1662. Published FR—06–15–90—Title correction.

Dated: June 19, 1990.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 90–14548 Filed 6–21–90; 8:45 am]

BILLING CODE 6560–50–M

[ER-FRL-3790-3]

Environmental Impact Statements and Regulations: Availability of EPA Comments

Availability of EPA comments prepared June 4, 1990 through June 8, 1990 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 13, 1990 (55 FR 13949).

Draft EISs

ERP No. D–AFS–J02017–00, Rating EC2, Pike and San Isabel National Forests/Comanche and Cimarron National Grasslands, Fifteen Years Oil and Gas Leasing Program, Implementation, Several, CO and KS.

Summary

EPA recommends that site-specific NEPA analysis be required for each leasing activity. Establishment of a consistent process to evaluate environmental impacts from specific leases should be provided in the final EIS.

ERP No. D–AFS–K61105–CA, Rating EC2, Lake of the Sky Interpretive Center, Site Selection with the Sixty-fourth Acres Tract, Tahoe City, Lake Tahoe, Placer County, CA.

Summary

EPA has environmental concerns regarding potential adverse impacts to wetlands and other waters of the U.S. EPA suggested the final EIS should contain a commitment to implement a broad range of mitigation to minimize and control water pollution from nonpoint source, visitor use activities, and related project impacts.

ERP No. D–BLM–K61101–AZ, Rating EC2, Safford District Land and Resource Management Plan Implementation, Graham, Greenlee, Cochise, Pinal Pima and Gila Counties, AZ.

Summary

EPA expressed concern about the effects of resource management activities such as livestock grazing, mineral and energy developments and agricultural irrigation on existing watershed conditions and surface water quality in the District. EPA also supports the designation of Areas of Critical Environmental Concern, wildernesses

and wild/scenic rivers because these would help to protect and enhance the natural resources of the Safford District.

ERP No. D–UAF–11040–CA, EC2, Beale Air Force Base Realignment Relocation of 323rd Flying Training Wing out of Mather AFB, Implementation, Yuba County, CA.

Summary

EPA expressed concerns due to insufficient information in the draft EIS to assess the project's compliance with Section 404 of the Clean Water Act, which regulates the discharge of dredged or fill material into waters of the U.S., including wetlands. EPA also asked for additional information and mitigation measures on hazardous waste volume, hazardous waste minimization, solid waste recycling, underground storage tanks and hazardous substances cleanup work.

Final EISs

ERP No. F1–BLM–J70005–WY, Lander Resource Area Wilderness Recommendations, Lankin Dome, Split Rock, Savage Peak, Miller Springs, Copper Mountain and Sweetwater Canyon Wilderness Study Areas (WSAs), Designation or Nondesignation, Rawlins District, Fremont, Carbon, Matrona, Sweetwater and Hot Springs, WY.

Summary

EPA finds that the majority of its comments were insufficiently addressed in the final Wilderness EIS. EPA recommends that the BLM prepare supplemental information which addresses EPA's concerns.

ERP No. F–COE–J36043–WY, Jackson Hole Flood Protection/ Levee Maintenance Plan, Operation and Maintenance (O&M), Snake and Gros Ventre Rivers, Funding, Teton County, WY.

Summary

EPA has not identified any potential environmental impacts requiring changes to the proposal.

ERP No. F–FAA–G51022–TX, New Austin Airport, Construction, Airport Layout Plan and Location Approval, Cities of Austin and Manor, Travis County, TX.

Summary

EPA understands that a supplemental EIS will be prepared based upon the information provided in the final EIS. EPA suggested that the measures and conditions of approval as set forth in Chapter 8 of the final EIS be incorporated into the supplemental document as appropriate.

Dated: June 19, 1990.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 90–14549 Filed 6–21–90; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

June 15, 1990.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–3785.

OMB Number: 3060–0392.

Title: Sections 1.1404 and 1.1408, Pole Attachment Complaint Procedures.

Action: Extension.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion.

Estimated Annual Burden: 20 Responses; 60 Hours.

Needs and Uses: Congress mandated pursuant to 47 U.S.C. 224 that the FCC ensure that the rates, terms, and conditions under which cable television operators attach their hardware to utility poles are just and reasonable. Section 224 also mandates establishment of an appropriate mechanism to hear and resolve complaints concerning the rates, terms and conditions for pole attachments. Section 1.1404 and 1.1408 of the Commission's rules were promulgated to implement section 224. The information will be used by the FCC to determine the merits of the complaint including calculating the maximum rate under the Commission's formula, if applicable. If the collection of information is not conducted, the Commission will not be able to adequately comply with the Congressional mandate.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90–14486 Filed 6–21–90; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Olive Branch Broadcasting Co., et al.

1. The Commission has before it the following groups of mutually exclusive applications for four new FM stations:

Applicant, city and state	File No.	MM docket No.
I		
A. Olive Branch Broadcasting Company; Olive Branch, MS.	BPH–880816MU	90–275
B. Jeffrey C. Floyd; Olive Branch, MS.	BPH–880816NI	
C. Mrs. J. J. Kirk d/b/a/ Olive Branch Broadcasting; Olive Branch, MS.	BPH–880816OE	
D. Olive Branch Communications, Inc.; Olive Branch, MS.	BPH–880816OP	
E. Gazelle Broadcasting Co., Inc.; Olive Branch, MS.	BPH–880817MA	
F. Louis M. Anzek; Olive Branch, MS.	BPH–880817MB	
G. Foster's Communications, Inc.; Olive Branch, MS.	BPH–880817MD	
H. Hermine A. Segal; Olive Branch, MS.	BPH–880817ME	
I. Cedarview Limited Partnership; Olive Branch, MS.	BPH–880817MF	
J. Cohn Broadcasting Company; Olive Branch, MS.	BPH–880817MG	
Issue heading and applicants		
1. Air Hazard, D, F		
2. See Appendix, D		
3. See Appendix, D		
4. See Appendix, D		
5. Comparative, All		
6. Ultimate, All		
II		
A. Kevin Potter; Gainesville, TX.	BPH–88070MC	90–290
B. Red River Radio; Gainesville, TX.	BPH–880707MF	
C. Mark Rodriguez, Jr.; Gainesville, TX.	BPH–880707MJ	
D. Cooke County Media; Gainesville, TX.	BPH–880707ML	

Applicant, city and state	File No.	MM docket No.
Issue heading and applicants		
1. Air Hazard, A		
2. Comparative, A, B, C, D		
3. Ultimate, A, B, C, D		
III		
A. Kelly Lynne Billings; Lucerne Valley, CA.	BPH-880714MI	90-289
B. RASA Communications Corp.; Lucerne Valley, CA.	BPH-880714MS	
C. P.K.L. Partnership; Lucerne Valley, CA.	BPH-880714NA	
D. Lucerne Valley Broadcasting, Inc.; Lucerne Valley, CA.	BPH-880714NM	
Issue heading and applicant(s)		
1. Comparative, A-D		
2. Ultimate, A-D		
IV		
A. Donald G. Jones; Carlinville, IL.	BPH-881221MR	90-291
B. Carlinville Broadcasting Corp.; Carlinville, IL.	BPH-881222MA	
Issue heading and applicants		
1. Air Hazard, A, B		
2. Comparative, A, B		
3. Ultimate, A, B		

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix (Olive Branch, MS)

2. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of D (OBCI).

3. To determine whether D's (OBCI's) organizational structure is a sham.

4. To determine, from the evidence adduced pursuant to Issues 2 and 3, above, whether D (OBCI) possesses the basic qualifications to be a licensee of the facilities sought herein.

[FR Doc. 90-14434 Filed 6-21-90; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Tarcom Communications, et al.

1. The Commission has before it the following groups of mutually exclusive applications for five new FM stations:

Applicant, city and state	File No.	MM Docket No.
I		
A. Tarcom Communications; Hill City, KS.	BPH-880718MA	90-299
B. KAYS, Inc; Hill City, KS.	BPH-880824MDQ03	
Issue heading and applicants		
1. Air Hazard, A		
2. Comparative, A, B		
3. Ultimate, A, B		
II		
A. Sugarland Broadcasting Inc.; Reserve, LA.	BPH-880615MC	90-278
B. Good Fortune Broadcasting; Reserve, LA.	BPH-880616MA	
C. Golden Girls Communications, Inc.; Reserve, LA.	BPH-880616MG	
D. Kathleen Pynes Hebert; Reserve, LA.	BPH-880616MV	
E. Virgie Hare du Treil; Reserve, LA.	BPH-880616NH	
F. Reserve Broadcasting Limited Partnership; Reserve, LA.	BPH-880616MF (Dismissed herein)	
Issue heading and applicants		
1. See Appendix, A		
2. See Appendix, A		
3. See Appendix, A		
4. Environmental, C, D, E		
5. Air Hazard, B		
6. Comparative, A-E		
7. Ultimate, A-E		
III		
A. Macon Radio Associates Limited Partnership; Macon, Georgia.	BPH-880421MD	90-279
B. Nancy S. Cooper d/b/a Cooper Communications; Macon, Georgia.	BPH-880421MN	
C. Southeast Communications Limited Partnership; Macon, Georgia.	BPH-880421MO	
D. MBM Broadcasting Company; Macon, Georgia.	BPH-880421MX	
E. Ocmulgee Radio Partners; Macon, Georgia.	BPH-880421NJ	
F. Pamela R. Jones; Macon, Georgia.	BPH-880421NL	
G. GKT Communications of Georgia Limited Partnership; Macon, Georgia.	BPH-880421NN	
H. Chizoman, Inc.; Macon, Georgia.	BPH-880421NF (Dismissed herein).	
J. Miracle Macon Radio Limited Partnership; Macon, Georgia.	BPH-880421NU (Dismissed herein).	
Issue heading and applicants		
1. Air Hazard, A, C		
2. Financial, E		
3. Comparative, A, B, C, D, E, F, G, H		
4. Ultimate, A, B, C, D, E, F, G, H		
IV		
A. Gloria Bell Byrd; Ormond-by-The-Sea, FL.	BPH-880912MC	90-277
B. Dr. Stephen Hollis; Ormond-by-The-Sea, FL.	BPH-880914MJ	
C. QMS Broadcasting, Inc.; Ormond-by-The-Sea, FL.	BPH-880914MS	
D. Michael A. and Cynthia L. Kulisky; Ormond-by-The-Sea, F1.	BPH-880914MZ	
E. T.D.L. Radio Limited Partnership; Ormond-by-The-Sea, FL.	BPH-880915MC	
F. Banyan Broadcasting of Ormond-By-The Sea, Florida, Inc.; Ormond-by-The-Sea, FL.	BPH-880915MD	

Applicant, city and state	File No.	MM Docket No.
G. Ormond-By-The-Sea Broadcasters, Inc.; Ormond-by-The-Sea, FL.	BPH-880915MF ...	
H. Ormond Communications, Inc.; Ormond-by-The-Sea, FL.	BPH-880915MG...	
I. Ormond Broadcasting, Inc.; Ormond-by-The-Sea, FL.	BPH-880915MI.....	
J. deHaro Radio, Ltd.; Ormond-by-The-Sea, F1.	BPH-880915MJ....	
K. O.B.S. Radio Limited Partnership; Ormond-by-The-Sea, FL.	BPH-880915MN...	
L. Sally S. DiLucente; Ormond-by-The-Sea, FL.	BPH-880915MP ...	
M. B H Broadcasting, Inc.; Ormond-by-The-Sea, FL.	BPH-880915MQ...	
N. McFayden Broadcasting Limited Partnership; Ormond-by-The-Sea, FL.	BPH-880915MR...	
O. Volusia Broadcasting Company; Ormond-by-The-Sea, FL.	BPH-880915MS...	
P. Agape of Central Florida, Inc.; Ormond-by-The-Sea, FL.	BPH-880915MT ...	
Q. Sunao Broadcasting Company, Inc.; Ormond-by-The-Sea, FL.	BPH-880915MU...	
R. Joy Bryon; Ormond-by-The-Sea, FL.	BPH-880915MV ...	
S. Greene Communications, LTD; Ormond-by-The-Sea, FL.	BPH-880915MW...	
T. Robin Gibson; Ormond-by-The-Sea, FL.	BPH-880915MZ ...	
U. Mid-Florida Broadcasting, Inc.; Ormond-by-The-Sea, FL.	BPH-880915NA....	
V. KLT Broadcasting Company; Ormond-by-The-Sea, FL.	BPH-880915NL....	
Issue heading and applicants		
1. Air Hazard, J, M		
2. Financial Qualifications, B, M, T		
3. Comparative, A-V		
4. Ultimate, A-V		
V		
A. Mildred D. Hall; Huntsville, TX.	BPH-881221ME ...	90-300
B. Helen Maryse Casey; Huntsville, TX.	BPH-881222MB ...	
Issue heading and applicants		
1. Air Hazard, A		
2. Comparative, A, B		
3. Ultimate, A, B		

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standarized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix (Reserve, Louisiana)

1. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of A (Sugarland).

2. To determine whether A's (Sugarland's) organizational structure is a sham.

3. To determine, from the evidence adduced pursuant to Issues 1 through 2 above, whether A (Sugarland) possesses the basic qualifications to be a licensee of the facilities sought herein.

[FR Doc. 90-14435 Filed 6-21-90; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Employee Thrift Advisory Council; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), a notice is hereby given of the following committee meeting:

Name: Employee Thrift Advisory Council.

Time and date: 10:00 a.m., July 10, 1990.

Place: Fifth Floor Conference Room, Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC

Status: Open.

Matters To Be Considered:

Approval of the minutes of the March 14, 1990, meeting; report of the Executive Director on the status of the Thrift Savings Plan; F Fund investment policy; Thrift Savings Plan surveys; requests for proposals on Board contracts; legislation; and new business.

Any interested person may attend, appear before, or file statements with the Council. For further information contact John J. O'Meara, Committee Management Officer, on (202) 523-6367.

Dated: June 18, 1990.

Francis X. Cavanaugh,

Executive Director.

[FR Doc. 90-14464 Filed 6-21-90; 8:45 am]

BILLING CODE 6710-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-868-DR]

Amendment to Notice of a Major Disaster Declaration; Iowa

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa (FEMA-868-DR), dated May 26, 1990, and related determinations.

DATED: June 18, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that the notice of June 13, 1990, closing the incident period, is rescinded. The incident period is May 18, 1990, and continuing.

Notice is herby given that Warren Pugh is appointed Federal Coordinating Officer, effective June 18, 1990.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant G. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-14497 Filed 6-21-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-870-DR]

Amendment to Notice of a Major Disaster Declaration; Ohio

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Ohio (FEMA-870-DR), dated June 6, 1990, and related determinations.

DATED: June 16, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Ohio, dated June 6, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 6, 1990:

The county of Harrison for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-14498 Filed 6-21-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-870-DR]

Amendment to Notice of a Major Disaster Declaration; Ohio

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Ohio (FEMA-870-DR), dated June 6, 1990, and related determinations.

DATES: June 18, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Ohio, dated June 6, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his delcaration of June 6, 1990:

The county of Monroe for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-14499 Filed 6-21-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-870-DR]

Amendment to Notice of a Major Disaster Declaration; Ohio

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Ohio (FEMA-870-DR), dated June 6, 1990, and related determinations.

DATED: June 15, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Ohio, dated June 6, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 6, 1990:

The counties of Belmont, Franklin, and Jefferson for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-14500 Filed 6-21-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-863-DR]

Amendment to Notice of a Major Disaster Declaration; Texas

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-863-DR), dated May 2, 1990, and related determinations.

DATED: June 15, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Texas, dated May 2, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 2, 1990:

The counties of Angelina, Cottle, Motley, and Tom Green for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-14501 Filed 6-21-90; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Virginia International Terminals Inc./P&O Containers Ltd./Nedlloyd Lines, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 224-200243-001

Title: Virginia International Terminals, Inc./P&O Containers Limited/Nedlloyd Lines Terminal Agreement.

Parties:

Virginia International Terminals, Inc.
P&O Containers Limited
Nedlloyd Lines

Synopsis: The Agreement provides for a change in the name of a party to the Agreement from Trans Freight Lines to P&O Containers Limited effective June 1, 1990.

Agreement No: 224-200127-001

Title: Virginia International Terminals, Inc./Yang Ming Marine Line Terminal Agreement.

Parties:

Virginia International Terminals, Inc.

Yang Ming Marine Line

Synopsis: The Agreement extends the term of Agreement No. 224–200127, a terminal use agreement, for a thirty day period ending July 13, 1990.

Agreement No: 224–200372

Title: North Carolina State Ports Authority/Lauritzen Reefers A/S Terminal Agreement.

Parties:

North Carolina State Ports Authority (Authority)

Lauritzen Reefers A/S (Lauritzen)

Synopsis: The Agreement provides for a guarantee of at least six Lauritzen vessel calls per contract year at Wilmington and Morehead City, North Carolina with an average revenue to the Authority of at least $4,000.00. It provides for a flat throughout rate of $100 per container. This rate includes: the use of a container crane and one container handler for up to 8 hours; other services and facilities usually provided for handling containers; and dockage for one day for vessels not to exceed 13,000 gross registered tons. In the event that the minimum number of vessel calls does not reach six or more in any one contract year, a retroactive surcharge of 125% of all previous billings will be assessed.

Dated: June 18, 1990.

By Order of the Federal Maritime Commission

Joseph C. Polking,

Secretary.

[FR Doc. 90–14463 Filed 6–21–90; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[CRADA–5]

Cooperative Research and Development Agreement

AGENCY: Centers for Disease Control (CDC), Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Centers for Disease Control (CDC), Center for Infectious Diseases, Division of Viral and Rickettsial Diseases, Retrovirus Diseases Branch, announces the opportunity for potential collaborators to enter into a Cooperative Research and Development Agreement (CRADA) to develop, evaluate and commercialize serological tests for detecting antibodies to human T-lymphotropic virus (HTLV) types I and II and discrimination of HTLV–I from HTLV–II infection. The immunoassays will be developed by using short, synthetic peptides from the envelope and core protein regions of HTLV–I and HTLV–II. CDC will provide both the peptides and well-characterized serum samples from continuing studies for the research and will participate in the development of assays.

It is anticipated that all inventions that may arise from this CRADA will be jointly owned by CDC and the collaborator(s). CDC will grant an option to the collaborator(s) to negotiate an exclusive, royalty-bearing license for CDC-owned technology. The CRADA will be executed for a 2-year period with the possibility of renewal.

Because CRADAs are designed to facilitate the development of scientific and technological knowledge into useful, marketable products, a great deal of latitude is given to Federal agencies in implementing collaborative research. As a Federal agency, CDC may accept staff, facilities, equipment, supplies, and money from the other participants in a CRADA; CDC may provide staff, facilities, equipment, and supplies to the project. The single restriction in this exchange is that CDC may not provide funds to the other participants in a CRADA.

SUPPLEMENTARY INFORMATION: This opportunity is available until 30 days after publication of this notice. Respondents may be provided a longer period of time to furnish additional information if CDC finds this necessary. For additional information contact:

Technical Contact(s)

Renu Lal, Ph.D., Division of Viral Diseases, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop G19, Atlanta, GA 30333, telephone (404) 639–1024.

Business Contact

Nancy C. Bridger, Technology Transfer Represenatative, Center for Infectious Diseases, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop C19, Atlanta, GA 30333, telephone (404) 639–3766.

Respondents should provide evidence of expertise in the development and evaluation of immunoassays, evidence of experience in commercialization of products for diagnostic use, and supporting data (e.g. publications, proficiency testing, certifications, resumes, etc.) of qualifications for the laboratory director and laboratory personnel who would be involved in the CRADA. The respondent will develop the final research plan in collaboration with CDC but should provide an outline of a research plan for review by CDC in judging applications.

Applicants will be judged according to the following criteria:

1. Soundness of the analytic approach and research plan;
2. Evidence of appropriate personnel to complete the project in a timely fashion or evidence of a plan to recruit and fund personnel appropriate for the project;
3. Evidence of scientific credibility;
4. Evidence of commitment and ability to develop and evaluate immunologic tests that will benefit the public interest; and
5. Willingness to provide financial support to the collaboration.

This CRADA is proposed and implemented under the 1986 Federal Technology Transfer Act, Public Law 99–502.

The responses must be made to: R. Eric Greene, Technology Transfer Coordinator, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop A20, Atlanta, GA 30333.

Dated: June 15, 1990.

Ladene H. Newton,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc 90–14489 Filed 6–21–90; 8:45 am]

BILLING CODE 4160–18–M

[Announcement No. 041]

Cooperative Agreement To Support Activities Related to Mammography Quality Assurance Program Announcement and Availability of Funds for Fiscal Year 1990

Introduction

The Centers for Disease Control (CDC) announces the availability of funds for fiscal year 1990 for a new cooperative agreement for activities related to mammography quality assurance with activities focused on assessing and improving the quality of mammography. The project will address assessment, planning, development, coordination, and evaluation of programs designed to improve the quality of screening for breast cancer with mammography.

Authority

This cooperative agreement is authorized by sections 301(a) (42 U.S.C. 241(a)) and 317(k)(3) (42 U.S.C. 247b(k)(3)) of the Public Health Service Act, as amended.

Eligible Applicants

Eligible applicants for this program are national, non-profit organizations

with broad experience and expertise in the field of radiology, breast imaging, and radiological physics. Limited competition is justified under this cooperative agreement because (1) of the highly technical and specific nature of the tasks to be addressed, and (2) because the need for broad implementation of findings and protocols related to improving mammographic image quality requires an organization that has recognized expertise in this area and is national in scope. Applicants must demonstrate that the organization is truly national (i.e., has a national structure with local affiliates), has national membership, use subcommittees or similar processes to address specific problems and issues, and convenes meetings which attract a national audience. Applicants must also demonstrate that organizational staff and/or consultants and collaborators will be adequate to meet project requirements.

Availability of Funds

Approximately $300,000 will be available in fiscal year 1990 to fund one project. It is expected that the cooperative agreement will begin on or about September 15, 1990. Award will be made for a 12-month budget period within a 1- to 3-year project period. Continuation awards for new budget periods within the approved project period will be made on the basis of satisfactory performance and the availability of funds.

Use of Funds

Cooperative agreement funds shall not be used for treatment or treatment services.

Purpose

The purpose of this cooperative agreement is to (1) promote improvement in the quality of mammography through the coordination of different professional groups presently conducting the examination, and those providing support for the mammography imaging system; (2) analyze data and literature related to quality assurance issues; and (3) design, test, and implement interventions focused on the practice of mammography and routine evaluation of the mammography imaging system. The demonstration projects should address the following programmatic goals for this procedure:

1. The data should permit examination of factors related to the performance of radiological technologists, the x-ray imaging system, and the film processing system. Assemble and analyze existing data and literature that can provide guidance for addressing current needs for improving mammographic image quality.

2. Evaluate the potential for and impediments to the development of quality assurance programs for various groups involved in mammography. These groups include, but are not limited to: State regulatory personnel (radiation control, survey, and certification), radiological technologists who perform mammography, radiological physicists, radiologists, film and chemistry supplier technical representatives, and x-ray equipment technical representatives.

3. Evaluate existing curricula, and if necessary, design and test curricula to train radiological technologists about the importance of routine quality assurance and techniques for improving the quality of taking the mammogram, inspecting the imaging system, and trouble-shooting. If appropriate, pilot testing of the curricula shall take place in a State with a comprehensive breast cancer control program.

4. Investigate the existence of curricula focused on mammography quality assurance, and if necessary, plan, test and evaluate directed information and education programs to radiologists, radiological technologists, and radiological physicists about the importance of image quality and strategies to implement a quality assurance program for mammography. If appropriate, pilot testing of program design shall take place in a State with a comprehensive breast cancer control program.

5. Evaluate the potential for a methodology that would evaluate both phantom images and clinical images to identify likely problem sources with the imaging process with a measurable degree of confidence.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under I. below and CDC will be responsible for conducting activities under II. below.

I. Recipient Activities

Activities A and B should begin in the first year and continue throughout the duration of the cooperative agreement. Activities C and D should begin in the second year and continue throughout the duration of the cooperative agreement.

A. Recipient should develop a system to: assemble, analyze and integrate data, literature, and existing materials that can provide guidance for addressing current needs for improving mammographic image quality. These should include factors related to the performance of radiological technologists, the x-ray imaging system, and the film processing system. These data should provide guidance for developing interventions to improve the quality of breast imaging.

B. Recipient should convene consultants from different organizations and professional backgrounds for periodic meetings to: (1) Evaluate data on the current status of mammography quality assurance, (2) plan strategies to meet the present and increasing needs for physics support and inspections, and for improving the performance of radiological technologiest and; (3) improve the performance of radiological technologists and increase their role in quality assurance practices. Representation should include, professional, and specialty groups.

C. Recipient should design, test, evaluate, and produce curricula to train relevant personnel about the importance of routine quality assurance and protocols for improving the quality of the mammogram, for inspecting the imaging system, and for trouble-shooting. Pilot testing of curricula shall take place in a State with a comprehensive breast cancer control program, utilizing expertise in the State to accomplish the training.

D. Recipient should evaluate and determine the potential for a methodology that would evaluate both phantom images and clinical images to identify likely problem sources with the imaging process with a measurable degree of confidence.

II. Centers for Disease Control Activities

A. Provide consultation and guidance in data collection and analysis of data on quality assurance in mammography, and contribute data from existing CDC cooperative agreements.

B. Participate in the design, implementation, and evaluation of interventions focused on radiologists, radiological technologists, and radiological physicists.

C. Participate in planning meetings conducted with different specialty groups convened by the Recipient.

D. Participate in the development of project tracking and evaluation strategies.

Application Review and Evaluation Criteria

Applications will be reviewed and ranked with other applications, and evaluated based on the following factors:

1. Applicant's understanding of problems associated with

mammography quality assurance, the recipient activities specified in the announcement, and ability to apply appropriate scientific and programmatic methods to successfully address these activities; (15%)

2. Ability of the applicant to carry out the tasks of the cooperative agreement and to provide the staff and resources necessary to perform and manage the project, including the experience and expertise of the organization, principal investigator/project director, and the staff in the area of radiology, mammography quality assurance, radiologic physics, curriculum development, and training; (15%)

3. Applicant's plan to assemble, analyze and integrate data, literature, and existing materials to provide guidance for addressing current needs for improving mammographic image quality; (10%)

4. Applicant's plan to convene consultants from different organizations and professional backgrounds for periodic meetings to address technical and policy issues related to mammography quality assurance; (10%)

5. Applicant's plan to design, test, evaluate, and produce curricula to train relevant personnel about the importance of routine quality assurance and protocols for improving the quality of the mammogram; (20%)

6. Applicant's plan to evaluate and determine the potential for a methodology that would evaluate both phantom images and clinical images to identify likely problem sources with the imaging process with a measurable degree of confidence; (10%)

7. Consistency of the measurable objectives with the stated purpose of the cooperative agreement and the ability to meet the objectives and timetable within the specified period; (10%)

8. Adequacy of the applicant's plan to monitor progress toward meeting the objectives of the project; (10%)

9. Extent to which the budget is reasonable, adequately justified and consistent with the intended use of the cooperative agreement funds. (Not weighted)

Other Requirements

Projects funded through a cooperative agreement that involve collection of information from 10 or more individuals will be subject to review under the Paperwork Reduction act.

Executive Order 12372

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 13.283.

Application Submission and Deadline

The original and two copies of the application (PHS Form 5161–1) must be submitted to Candice Nowicki, Grants Management Officer, Grants Management Branch, Mailstop E–14, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, GA 30305, on or before August 24, 1990.

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications

Applications which do not meet the criteria in 1.a. or b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

Information on application procedures, copies of application forms and other material may be obtained from Linda M. Long, Grants Management Specialist, Grants Management Branch, Mailstop E–14, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, GA 30305, telephone (404) 842–6575 or FTS 236–6575.

Please refer to Announcement Number 041 when requesting information and submitting any application on the Request for Assistance.

Technical assistance may be provided by Robert A. Smith, Ph.D., Cancer Prevention and Control Branch, Mailstop F–11, Division of Chronic Disease Control and Community Intervention, Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Atlanta, GA 30333, Telephone (404) 488–4390, or FTS 236–4390.

Dated: June 15, 1990.

Ladene H. Newton,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 90–14490 Filed 6–21–90; 8:45 am]

BILLING CODE 4160–18–M

[Announcement No. 031]

National Institute for Occupational Safety and Health; Occupational Health and Safety Surveillance Through Health Departments and Nurses in Agricultural Communities

Introduction

The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC) announces the availability of funds for cooperative agreements. Competitive applications are invited from state and territorial departments of health for programs to perform surveillance for the purpose of preventing occupational injury and illness in workers employed in agriculture. These programs will help develop intervention strategies to reduce injury and disease rates among Americans engaged in agricultural work and will develop more complete information on agricultural injury and disease problems. They will be designed to link state and territorial health departments to agricultural areas, and, in some instances, specifically to local hospitals. Through these programs, nurses will identify and report certain sentinel health events related to agricultural hazards.

Authority

This program is authorized in section 20(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a)). Regulations are set forth in 42 CFR part 87, National Institute for Occupational Safety and Health Research and Demonstration Grants.

Eligible Applicants

Eligible applicants are the official public health agencies of the states, the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, and the Republic of Palau. Awards will be limited to state and territorial health departments because it is only through the legislated authority of these health departments that cooperation among other health service agencies in the state or territory can be effected.

Availability of Funds

Approximately $1.6 million is available in Fiscal Year 1990 to fund 7–15 awards. It is expected that the average award will be approximately $155,000, ranging from $100,000 to $250,000. These funding estimates may vary and are subject to change. The awards are expected to be made prior to September 30, 1990, and to be for a 12-month budget period within a project period of three to five years. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of this program is to provide ongoing, responsive surveillance of agriculture-related disease and injury by placing nurses, preferably nurses with occupational health training, in up to 50 agricultural communities. The nurses would identify and report agriculture-related disease and injury cases to state or territorial health departments; assist in collecting other agriculture job-related fatality, safety, and health data; provide targeted educational interventions; and conduct community evaluations of occupational agriculture risk factors. They will work in collaboration with state and territorial and local health departments and, as appropriate, with county extension agents and other community resources.

Program Requirements

The cooperative activities of the recipient and the funding agency are:

A. Recipient Activities

1. Develop, implement and maintain a community-based system of reporting agricultural job-related diseases and injuries through the employment and assignment of nurses, preferably nurses with occupational health training, in agricultural locales (one nurse per community or medical service catchment area, 3–5 areas per State) that are representative of the state's agricultural population and would most benefit from such a nurse assignee. Data systems should be computerized and consistent with ongoing CDC and state reporting systems.

2. Select for epidemiologic follow-up by nurse assignee targeted sentinel health incidents associated with the work that agricultural workers and their families perform (*e.g.*, acute pesticide poisonings and dermatoses; bacteria-related diarrheal diseases and tuberculosis among migrant agricultural workers and their children; agricultural worksite- and farm implement-related amputations, fatalities, injuries and severe disabilities; hypersensitivity pneumonitis and other acute respiratory insults; musculoskeletal disorders; and noise-induced hearing loss).

3. Provide feedback to nurses on a regular basis. This could include case report tabulations by hospital, state, region, agricultural sector, diagnosis and other appropriate factors. On a regular basis, make this information available to providers in order to promote case reporting and cooperation.

4. In collaboration with county extension agents, agriculture workers, agricultural worksite owners, NIOSH staff and other health department personnel, develop a process of case follow-up with agricultural workers and families to provide disease and injury prevention information.

5. In collaboration with the local medical community, schools, county extension agents, agriculture workers, agricultural worksite owners, adult and youth farmer associations, NIOSH staff and other health department personnel, provide health education and promotion outreach that incorporates agricultural vocation classes, health classes, and other appropriate areas.

6. Evaluate project activities in terms of the altered degree of case ascertainment, and the effectiveness of worksite follow-up and recommendations.

7. Collaborate with NIOSH, as needed, in training and providing orientation for nurse assignees in occupational safety and health and taking occupational histories, surveillance and reporting, health screening and testing, technical support ranging from site investigations to supplying handout literature, and final evaluation of the activity.

The responsibilities of the nurse assignee would include; provide liaison to local, state or territorial health departments and/or NIOSH personnel doing site evaluations; identify agriculture-related fatalities, injuries, and illnesses; maintain contact with workers after an illness or accident; and provide outreach for health education, health promotion and prevention efforts within agricultural regions of the state.

B. CDC/NIOSH Activities

1. Provide technical assistance in all phases of the development, implementation and maintenance of these cooperative agreements, including, but not limited to: Providing guidance on occupational conditions appropriate for reporting; recommending reporting guidelines; developing case reporting forms; developing and providing booklets and educational materials to be used by the nurse assignees in carrying out intervention and prevention functions; providing collaboration in ensuring data systems are consistent with ongoing CDC and state reporting systems; and providing NIOSH publications and other documents to nurse assignees or field location, when appropriate and needed.

2. Provide initial and follow-up training of assigned nurses. Depending on applicant's resources, provide expertise and assistance to site nurses and local health officials, as needed, to perform technical medical and testing procedures. Provide orientation for site nurses, as needed, including occupational history taking and an introduction to concepts in surveillance and reporting. Assist in problem identification and resolution, and provide technical support which may range from site investigation to supplying literature.

3. Assist in the development of criteria for initiating and conducting field investigations and intervention efforts, when requested, and respond to incident reports for field follow-up according to that criteria.

4. Provide technical assistance in the evaluation of the results of the reporting, intervention and outreach activities.

5. Promote and facilitate collaboration, if appropriate, with agricultural safety and health researchers funded under other NIOSH-sponsored surveillance and agricultural initiatives.

6. Assist in disseminating a descritpion of the impact of community-based outreach nurses in agricultural communities.

Evaluation Criteria

A CDC-convened at hoc committee will review the applications. The review will be based on the evidence submitted which specifically describes the applicant's ability to meet the folowing criteria:

1. The applicant's understanding of the objectives of the proposed initiative.

2. Appropriate designation and selection of the type of nurse to be hired, the geographical area in which she/he will function, and the suitability of her/his location.

3. Valid basis for selection of condition(s) to focus upon in this project, *i.e.*, documented and perceived risk to agricultural workers and their families in the area.

4. Appropriateness of the proposed schedule for initiating and accomplishing the activities of the cooperative agreement.

5. Experience of proposed staff, including the proposed project coordinator, in coordinating activities between the state or territorial offices and community agricultural and health facilities. Staff must provide assurances of substantial time and resource commitment to the program.

6. Plans for collaboration and coordination with local community expertise for the purpose of implementing the proposed outreach, reporting, intervention, consultation and training efforts.

7. Ability and willingness to incorporate surveillance for occupational disorders in this project, paritcularly agricultural job-related conditions, as an integral part of public health programs for identification, investigation, and prevention of agriculture-related health and safety incidents.

Surveillance includes the identification of workplace causes of agricultural related diseases and injuries, and the reporting of these causes to the appropriate occupational safety and health institution in the applicant's state.

8. The feasibility of approach to evaluation techniques for the outreach, reporting and follow-up strategies.

9. A defined, direct and strong relationship between the proposed activity and existing, if any, occupational health reporting and follow-back, activities currently ongoing in the applicant state or territory.

10. Applications with plans for effective collaboration and coordination among local community resources, extension officers and academic institutions.

Also, the budget will be reviewed to determine the extent to which it is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

Funding Priorities

Those applications demonstrating a relationship of the proposed activity to the Farm Family Health and Hazard Surveillance Cooperative Agreement Program (Announcement Number 040), applications for which are also being considered by NIOSH, may be afforded higher consideration for funding.

Other Requirements

Projects funded through a cooperative agreement that involve collection of information from 10 or more individuals will be subject to review under the Paperwork Reduction Act.

Executive Order 12372 Review

Applications are subject to review as governed by Executive Order 12372 entitled "Intergovernmental Review of Federal Programs."

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Number is 13.283, Centers for Disease Control—Investigations and Technical Assistance.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 must be submitted to Mr. Henry Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, Mailstop E14, 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305, on or before July 18, 1990.

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly-dated receipt from a commerical carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications

Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

Information on application procedures, copies of application forms and other material may be obtained from Mr. Harvey Rowe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, Mailstop E14, 255 East Paces Ferry Road, NE, Room 300, Atlanta, Georgia 30305, or by calling (404) 842–6630 (FTS: 236–6630).

Announcement No. 031, "Occupational Health and Safety Surveillance Through Health Departments and Nurses in Agricultural Commmunities," must be referenced in all requests for information pertaining to these projects.

Technical assistance may be obtained from Paul Seligman, M.D., NIOSH, Centers for Disease Control, 4676 Columbia Parkway, Mailstop R21, Cincinnati, Ohio 45226, or by calling (513) 841–4353 (FTS: 684–4353).

Dated: June 18, 1990.

Larry W. Sparks,

Acting Director, National Institute for Occupational Safety and Health.

[FR Doc. 90–14491 Filed 6–21–90; 8:45 am]

BILLING CODE 4160–19–M

Food and Drug Administration

[Docket No. 90N–0208]

Chelsea Laboratories, Inc., Proposal To Withdraw Approval of Abbreviated New Drug Applications; Opportunity for a Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is proposing to withdraw approval of nine abbreviated new drug applications (ANDA's) held by Chelsea Laboratories, Inc., 696 Orlando Ave., West Hempstead, NY 11442 (hereinafter referred to as Chelsea). The bases for the proposed withdrawals are (1) that the applications contain untrue statements of material fact; (2) that new evidence of clinical experience not contained in the applications or not available until after the applications were approved, evaluated together with the evidence available when the applications were approved, shows that the drugs are not shown to be safe for use under the conditions of use upon the basis of which the applications were approved; and (3) that based upon new information, evaluated together with the evidence available when the applications were approved, there is a lack of substantial evidence that the drugs will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their landing.

DATES: A hearing request is due on July 23, 1990; data and information in support of the hearing request are due on August 21, 1990.

ADDRESSES: A request for hearing, supporting data, and other comments should be identified with Docket No. 90N–0208 and submitted to the Dockets Management Branch (HFA–305), Rm. 4–62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Walter A. Brown, Center for Drug Evaluation and Research (HFD–366), Food and Drug Administration, 5600

Fishers Lane, Rockville, MD 20857, 301–295–8041.

SUPPLEMENTARY INFORMATION:.

Background

Chelsea holds the following approved ANDA's:

ANDA 70–421 for Verapamil Hydrochloride Tablets 80 milligrams (mg) and ANDA 70–422 for Verapamil Hydrochloride Tablets 120 mg, generic versions of Searle's Calan Tablets (the listed drug under section 505(j)(6) of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 355(j)(6)).

ANDA 71–020 for Disopyramide Phosphate Capsules 100 mg and ANDA 71–021 for Disopyramide Phosphate Capsules 150 mg, generic versions of Searle's Norpace Capsules (the listed drug).

ANDA 71–558 for Perphenazine 4 mg and Amitriptyline HC1 50 mg Tablets, a generic version of Merck Sharp & Dohme's Triavil Tablets (the listed drug).

ANDA 71–661 for Oxazepam Capsules 10 mg, ANDA 71–662 for Oxazepam Capsules 15 mg, and ANDA 71–663 for Oxazepam Capsules 30 mg, generic versions of Wyeth's Serax Capsules (the listed drug).

ANDA 89–700 for Perphenazine Tablets 8 mg, a generic version of Schering's Trilafon Tablets (the listed drug).

In support of approval of the ANDA's listed above, Chelsa submitted information to show that its products are bioquivalent to the relevant listed drugs. This information consisted of in vivo bioequivalance studies or in vitro dissolution studies and other information supporting a waiver of in vivo bioequivalence studies.

This information was critical to the approval of Chelsea's products. The listed drugs were approved based on, among other things, safety studies and adequate and well-controlled clinical efficacy studies showing that the products are safe for their intended uses and have the effects claimed for them. Chelsea's generic versions of the listed drugs were approved without the submission of such studies. Instead, Chelsea's products were approved based on findings that the products were bioequivalent to the listed drugs. These findings of bioequivalence are necessary to support the conclusion that Chelsea's products will be therapeutically equivalent to the listed drugs.

In addition to the bioequivalence data, Chelsea submitted to each ANDA dissolution data, batch production records, analytical data (assay, content uniformity), and stability data. These data and information were also necessary for approval. FDA used the dissolution data to assess the comparability of Chelsea's products and the listed drugs, and to establish appropriate dissolution specifications for future, commerical batches of Chelsea's products. The dissolution specifications help provide assurance that Chelsea's commerical batches remain bioequivalent to the listed drugs.

The batch production records are significant because they characterize the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of Chelsea's products shown to be bioequivalent to the listed drugs. In general, these same methods, facilities, and controls must be applied to the production of Chelsea's commerical batches to provide assurance that the products remain bioequivalent to the listed drugs.

The analytical data must demonstrate that Chelsea's products meet required specifications and help provide assurance that the methods used in, and the facilities and controls used for, the manufacture, processing, and packaging of the drugs are adequate to preserve their identity, strength, quality, and purity.

The stability data help provide assurance that Chelsea's products will retain their physical, chemical, and bioequivalence characteristics throughout their labeled shelf-life.

For each of the ANDA's listed above, Chelsea manufactured one or more pilot batches of product in order to conduct the tests necessary for approval. Chelsea submitted to FDA copies of the batch production records for the pilot batches. These copies were purported to be copies of the original batch production records retained by the firm.

On August 21, 1989, FDA initiated comprehensive inspections of a cross-section of generic drug manufacturers as part of the agency's ongoing evaluation of the generic drug industry. The general objectives of these inspections are:

1. To determine if ANDA data (e.g., bioequivalence and stability data) are valid and relevant to the commercially marketed products;

2. To determine if manufacturers are adhering to ANDA and current good manufacturing practice (CGMP) requirements; and

3. To invoke regulatory actions as appropriate if violations are encountered.

Chelsea was selected for inspection as part of the cross-section of generic drug manufacturers.

FDA conducted an inspection at the firm's Inwood, New York, manufacturing facility between August 23, 1989, and October 5, 1989. At the conclusion of the inspection, FDA issued a Notice of Inspectional Observations (Form FDA 483) delineating instances of untrue statements, missing documents, and/or discrepancies in the batch records for various products. By letter dated November 9, 1989, Chelsea responded to the observations detailed in the Form FDA 483.

FDA's inspection revealed that Chelsea did not submit true and accurate copies of the original batch records for the pilot batches used to conduct tests necessary for approval of the aforementioned ANDA's. Instead, Chelsea submitted revised batch production records showing different manufacturing processes and data. The agency approved Chelsea's products based upon the untrue information and data contained in the ANDA's.

After careful review of all documents and facts obtained during the inspection, Chelsea's November 9, 1989, letter in response, as well as subsequent letters from Chelsea and meetings with the firm, the agency determined that there was sufficient justification to withdraw approval of ANDA's 70–421, 71–020, 71–021, 71–558, 71–663, and 89–700. FDA also determined that there was sufficient justification to change the therapeutic equivalence evaluation code for each product from therapeutically equivalent to not shown to be therapeutically equivalent. Chelsea was informed of the agency's conclusions in a letter dated February 1, 1990. Chelsea requested a meeting to respond to the February 1, 1990, letter. At a meeting on February 8, 1990, the firm agreed that the August-October 1989 inspection revealed discrepancies between records on file at the firm and those submitted to the ANDA's. The firm stated that these discrepancies fell into the following categories:

1. Site of film coating operation;
2. Order of mixing ingredients;
3. Screen size;
4. Mixing times; and
5. Identity of individuals performing operations.

Chelsea admitted that the data submitted to the ANDA's were not accurate. This February 8, 1990, admission reconfirmed admissions contained in Chelsea's letter of November 9, 1989. However, on February 8th, the firm presented to the agency a document that described the potential effects the differences in manufacturing procedures could have had on the products. The firm contended that there were no significant differences and effects. In addition, the firm stated that an independent outside

consultant had performed a scientific evaluation of the bioequivalence data for the drug products and concluded that it was unlikely that the changes in manufacturing would affect the bioequivalence of the products. FDA disagrees with the firm's contentions. Chelsea has failed to demonstrate conclusively that the revised manufacturing procedures do not affect the bioequivalence, safety, and effectiveness of its products.

Based upon information obtained from inspections of Chelsea and Colorcon, Inc., information furnished by a former employee of Chelsea, and meetings and correspondences with Chelsea, the Director of the Center for Drug Evaluation and Research has determined that the ANDA's listed below should be withdrawn. These ANDA's include the six identified in the agency's February 1, 1990, letter and three additional ANDA's that relied on data from some of the six applications listed in the February letter. These ANDA's contain untrue statements of material fact. Moreover, based on this review, the drugs covered by these applications have not been shown to be safe and lack substantial evidence of effectiveness. A discussion of the evidence supporting these determinations follows:

ANDA 70–421; Verapamil Hydrochloride Tablets, 80 mg. In support of approval of ANDA 70–421, Chelsea submitted to FDA batch production records for batch PD 825. Product from this batch was used to conduct the required in vivo bioequivalence study, dissolution tests, analytical tests, and stability tests.

During the inspection of the Inwood, New York, facility, FDA noted various discrepancies between the records for batch PD 825 at the firm and the records for the batch submitted to FDA with the ANDA. The firm's files contained two versions of the batch record—a handwritten record that Chelsea identified as the original and a typed record that is identical to the record submitted with the ANDA. Comparison of the handwritten original record with the ANDA submission record reveals that the names of the individuals who created the master formula and approved the master formula are different on each record. The names of the individuals who checked the production order are also different on each record. Both the original handwritten record and the ANDA submission record lists the theoretical batch size as 50,000 tablets, however, the handwritten original record states the quantity completed to be 47,517 tablets with an actual yield loss of 2,483 tablets or 5.0 percent while the ANDA submission record identifies the quantity completed to be 49,220 tablets with an actual yield loss of 248 tablets or 0.5 percent.

The original handwritten record and the ANDA submission record contain standard operating instructions used in the preparation of the product. The ANDA submission record is marked Revision No. 1. Although the qualitative and quantitative formulations are the same on each record, the manufacturing steps used in the granulation process are different between the original handwritten record and the ANDA submission record. These differences include the order of mixing ingredients, the blending times of ingredients, and the screen sizes used in the various steps. Also, the ANDA submission record lists specific times when each step in the granulation process started and stopped whereas the original handwritten record does not specify any such times. Further, the ANDA submission record contains the theoretical and actual weight and the loss in weight and percent of the finished granulated blend while the original handwritten record fails to contain this information.

A comparison of the compression data for the tablets in the original handwritten record and in the ANDA submission record shows several discrepancies. The values presented for the actual run weight, hardness, and thickness of the tablets are different in each record. Further, the compressed tablets weight/yield data in the original handwritten record and in the ANDA submission record are also contradictory. Finally, the initials of the operator represented as having performed the compression process in the original handwritten record are not the same as the initials of the operator represented as having performed the compression process in the ANDA submission record.

Data on film coating are provided in both the original handwritten record and the ANDA submission record on a form identified as "Film Coating Instructions." In the original handwritten record, no creation date for this form is identified. In the ANDA submission record, the lower left-hand corner of the form has the notation "C–176 (10/84)." Data on the film coating of Verapamil Hydrochloride Tablets 80 mg contained in the original handwritten record state that the film coating process began on November 16, 1983, while the ANDA submission record states that it began on November 17, 1983. The discrepancies are further amplified by the fact that the film coating data contained in the ANDA submission record were placed on a form created 11 months after the date the form was purportedly filled out. Finally, the weight and yield data in the original handwritten record do not correspond to the weight and yield data in the ANDA submission record.

ANDA 70–422, Verapamil Hydrochloride Tablets, 120 mg. The approval of ANDA 70–422 for the 120-mg product relied on the in vivo bioequivalence study conducted on Chelsea's Verapamil Hydrochloride Tablets 80 mg, batch PD 825, discussed above. The requirement for an in vivo bioequivalence study on the 120-mg product was waived by FDA because at that time the agency thought that an acceptable bioequivalence study had been conducted on the 80-mg product, both products met acceptable dissolution parameters, and both drugs were proportionately similar in their active and inactive ingredients. Because the validity and integrity of the bioequivalence data on the 80-mg product have been impugned by the untrue information concerning batch PD 825, the bioequivalence of the 120-mg product is now in question.

Batch PD 826 was used to conduct the required dissolution, analytical, and stability testing for the 120-mg product. Numerous discrepancies have been identified in the records for batch PD 826 at the firm versus the record for the batch submitted to FDA in support of the ANDA. The names and initials of the individuals who created the master formula and approved the master formula are different in each record. Both the original batch record and the ANDA submission record list the theoretical batch size as 50,000 tablets. However, the original record states the quantity completed to be 45,047 tablets while the ANDA submission record states the quantity completed to be 49,266 tablets.

Both the original batch record and the ANDA submission record contain standard operating instructions. However, the manufacturing steps used in the granulation process are different in the original batch record and in the ANDA submission record. In the original batch record, step VI of the granulation process calls for the addition of ingredients #1 and #2, step VII calls for the addition of ingredients #2, 3, 5, and 7, while step VIII requires the addition of ingredient #6. A major discrepancy exists as to when, where, and if ingredient #4 was incorporated into the blend. The ANDA submission record

identifies all ingredients as being used. Additional discrepancies include the order of mixing ingredients, the blending times of ingredients, and the screen sizes and processes used in the various steps. Also, the standard operating instructions in the original batch record indicate that the starting date was October 25, 1983, with steps IV and V having been performed on October 31, 1983. However, the standard operating instructions in the ANDA submission record state the starting date to be October 27, 1983, with steps IV and V having been performed on November 1, 1983. In addition, the ANDA submission record lists specific times when each step in the granulation process started and stopped, whereas the original batch record does not specify any such times. Further, the ANDA submission record contains the theoretical and actual weight and the loss in weight and percent of the finished granulated blend, while the original batch record fails to contain this information. The compression data, as expressed in the original batch record, are different from the data contained in the ANDA submission record in several instances. The value listed for the thickness of the tablet is different in each record. Further, the compressed tablets weight/yield data contained in the original batch record and in the ANDA submission record are contradictory. Finally, the initials of the operator represented as having performed the compression process in the original batch record are not the same as the initials of the operator represented as having performed the compression process in the ANDA submission record.

Data on film coating are provided in both the original batch record and the ANDA submission record on a form identified as "Film Coating Instructions." While the form in the original batch record has no creation date, the form in the ANDA submission record has in the lower left-hand corner the notation C-176 (10/84). Chelsea has stated on the forms in both the original batch record and the ANDA submission record that the film coating process began and ended on December 9, 1983. Thus, the film coating data contained in the ANDA submission record were placed on a form created 10 months after the date the form was purportedly filled out. Finally, the weights designated in step II of the "Film Coating Instructions" contained in the original batch record and in the ANDA submission record are not the same, and the weight and yield data contained in the original batch record and in the ANDA submission record are not the same.

ANDA 71-020, Disopyramide Phosphate Capsules, 100 mg. The approval of ANDA 71-020 for Disopyramide Phosphate Capsules 100 mg relied on a bioequivalence study conducted on Chelsea's Disopyramide Phosphate Capsules 150 mg, batch PD 1032. The requirement for an in vivo bioequivalence study on the 100-mg product was waived by FDA because at that time the agency thought that an acceptable bioequivalence study had been conducted on the 150-mg product, both products met acceptable dissoulution parameters, and both products were proportionately similar in their active and inactive ingredients.

As discussed below, the batch records submitted to FDA concerning batch PD 1032 used to conduct the in vivo bioequivalence study for the 150-mg product contained a number of discrepancies. These discrepancies impugn the validity and integrity of the bioequivalence data on the 150-mg product. Thus, the bioequivalence of the 100-mg product is now in question.

In addition, batch PD 1031 was used to conduct the required dissolution, analytical, and stability tests for the 100-mg product. During the inspection between August 23, 1989, and October 5, 1989, FDA observed that the original batch record for PD 1031 in the possession of the firm was not an identical copy of the batch record submitted with the ANDA.

The firm provides standard operating instructions in both the original batch record and the ANDA submission record. However, the granulation process is different in the original record and the ANDA submission record in that the order of mixing ingredients, the blending times of ingredients, and the screening sizes and process are not the same. In addition, the original record does not contain the initials of the operator performing the manufacturing steps, the initials of the checker, the date on which the manufacturing steps occurred, and the specific times when each step in the granulation process started and stopped. The ANDA submission record contains this information. Further, the ANDA submission record contains the theoretical and actual weight, the loss in weight, and percent of the finished granulated blend while the original record does not contain these data.

The encapsulation page in the original batch record lacks the initials of the operator performing the encapsulation of the product, the initials of the checker, and the date on which the encapsulation occurred, while the initials of the operator, the initials of the checker, and the date of encapsulation are included in the ANDA submission. In addition, in the ANDA submission record, the initials of the operator who encapsulated the product in steps XI and XII under "Encapsulation" and the initials of the individual who checked the encapsulation process under these two steps are different from the initials and signature of the individuals identified on the "Capsule Run Weight Chart" as performing and checking the encapsulating operations.

ANDA 71-021, Disopyramide Phosphate Capsules, 150-mg. In support of approval of ANDA 71-021, Chelsea submitted a batch production record for batch PD 1032. Product from this batch was used to conduct the required in vivo bioequivalence study, dissolution tests, analytical tests, and stability tests. The inspection of the firm revealed that the original batch record for Pd 1032 in the possession of Chelsea was not an exact copy of the batch record submitted with the ANDA.

Standard operating instructions are provided in both the original batch record and the ANDA submission record. However, the original batch record lacks the page under standard operating instructions—Granulation—with the specific manufacturing steps used to manufacture the product.

In a letter dated February 12, 1990, Chelsea attempted to explain the manufacturing procedures in relation to the ANDA batch and the initial production batch record. It states:

> The differences between the manufacturing procedure used in the ANDA batch (which was the basis of all analytical and bioequivalence data in the original ANDA) and initial production batches are defined below. The ANDA batch record for the 150-mg strength of Disopyramide Phosphate Capsules did not contain information regarding the manufacturing procedure used. For this review it is reasonable to assume, based upon our knowledge of company operations and the product formulation, that the manufacturing procedure was the same as the 100 mg strength, for which records are available.

The Center for Drug Evaluation and Research also assumes that batch PD 1032 was manufactured using the same procedures used to manufacture the Disopyramide Phosphate Capsules 100 mg, batch PD 1031. This is a logical assumption because the qualitative formulas are identical for both batches, the ingredients are listed in the identical order on both master formula cards, and batch PD 1032 (150-mg strength) was manufactured only 1 day after batch PD

1031 (100-mg strength) on the same equipment. However if these assumptions are correct, then the discrepancies previously delineated between the original batch record and the ANDA submission record for Disopyramide Phosphate Capsules 100 mg, batch PD 1031, regarding the different order of mixing ingredients, blending times of ingredients, and screening sizes and process would be true for Disopyramide Phosphate Capsules 150 mg as well.

There are also discrepancies in the original batch record for batch PD 1032. Included in the original batch record for the product is the "Capsule Run Weight Chart." The initials of the individual who set up the encapsulating equipment and the two operators who performed the encapsulation, and the signature of the individual who checked the equipment as listed on the capsule run weight chart are different from the initials of the operator and checker who performed the encapsulation process in steps XI and XII under "Encapsulation" of the standard operating instructions.

ANDA 71–558, Perphenazine and Amitriptyline HCl Tablets, 4-mg/50-mg. In support of ANDA 71–558, Chelsea submitted a batch production record for batch PD 1035. Product from this batch was used to conduct the required in vivo bioequivalence study, dissolution tests, analytical tests, and stability tests.

FDA's investigation identified three versions of the batch record for batch PD 1035; the original batch record, a typed version of the batch record, and the batch record submitted to FDA with the ANDA. Several omissions and discrepancies exist between the original batch record and the other two versions. In this regard, the names of the individuals who created and approved the master formula are different in the original batch record and in the ANDA submission record. While the original batch record has the initials of the individual who checked the production order, the ANDA submission record does not. In addition, the production order date is different in the two versions.

Standard operating instructions delineating pharmacy, granulation, and compression steps used in the manufacturing and tableting of the batch and subsequent data are included in the ANDA submission record. Also included in the ANDA submission are specific times when manufacturing steps occurred, equipment used in the manufacturing process, and the initials of the individuals who performed the manufacturing operations. The original batch record, on the other hand, lacked any standard operating instruction concerning the pharmacy and granulation processes. Thus, the original batch record contains no instructions concerning how the batch was manufactured and no subsequent data pertinent to the manufacturing process. Also lacking in the original batch record are the specific times in the manufacturing process, identification of the equipment used, and the initials of the individuals who performed the manufacturing steps. Although instructions were provided under "Compression" in the original batch record, only two data entries were recorded—theoretical run weight and average tablet weight. No other related data were included in the original batch record nor were the initials of the individuals who performed and checked the tableting operations in the original batch record.

Documentation contained in the original batch record states that film coating for batch PD 1035 occurred at Colorcon, Inc., West Point, PA, on March 25, 1985. However, documentation included in the ANDA submission record states that the film coating of the batch was performed on March 25, 1985, at Chelsea's facility at Inwood, NY, by Chelsea personnel. The film coating instructions for High Coater and Polishing Solutions #2 for Hi Coater are on Chelsea's forms with no indication that the initials of the individuals performing the operations are not Chelsea employees. The firm stated in its November 9, 1989, letter to FDA that, "the investigator's observation that the film coating on Batch PD 1035 was performed at Colorcon Inc., West Point, PA is true."

ANDA 71–663, Oxazepam Capsules, 30 mg. In support of approval of ANDA 71–663, Chelsea submitted a batch production record for batch PD 1041. Product from this batch was used to conduct the required in vivo bioequivalence study, in vitro dissolution tests, analytical tests, and stability tests.

During the inspection, FDA discovered numerous inconsistencies between the original batch record for PD 1041 maintained at the firm and the batch record for PD 1041 submitted with the ANDA.

Under the standard operating instructions—Granulation—the manufacturing steps, including the order of mixing ingredients, blending times of ingredients, and screening sizes and processes, that were in the original batch record and in the ANDA submission record, were different. In addition, the original batch record lacks the initials of the operator performing the manufacturing steps, the initials of the checker, the date on which the manufacturing steps occurred, and the specific times when each step in the granulation process started and stopped. The ANDA submission record contains this information. With regard to the specific times in the ANDA submission record when each step in the granulation process started and stopped, the listed times are as follows:

Step VI on 10:10 p.m., off 10:12 p.m.
Step VII on 10:25 p.m., off 10:35 p.m.
Step VIII on 3:50 p.m., off 4:00 p.m.
Step IX on 4:30 p.m., off 4:35 p.m.

Each of these steps was recorded in the ANDA submission record as being performed on January 4. According to these data, steps VIII and IX occurred approximately 6 hours before steps VI and VII. Further, the ANDA submission record contains the theoretical and actual weight and the loss in weight and percent of the finished granulated blend, while the original batch record does not contain this information.

The front page of the master formula and the capsule run weight chart in the original batch record and the front page of the master formula in the ANDA submission record list three different capsule colors for this product. Two of those colors were crossed out leaving only the Pink Cl/Nat Cl as the apparent final color. The bottom of the master formula page on both records—items 17 and 18—lists two color capsules with the quantity for each capsule color type. These entries list 7,200 black/green capsules and 17,760 Pink Cl/Nat Cl capsules.

In the ANDA submission record, under standard operating instructions—Encapsulation—the capsule is identified as a Pink Cl/Nat Cl. However, the quantity of capsules filled as stated in step XIV (24,960) does not correspond to the quantity of Pink Cl/Nat Cl as stated on the master formula page.

In the original batch record, there are documents indicating that three colored capsules were used in the encapsulation process. One encapsulation page in the original batch record shows that the product was filled in a size #4 Blue op/White op capsule totaling 24,960 capsules. The operator initialed and dated the document on January 8, 1985. A second encapsulation page in the original batch record shows that the product was filled in a size #4 Pink Cl/Nat Cl capsule totaling 24,960 capsules. The operator who performed this process initialed and dated the document on January 10, 1985. A third document is a handwritten statement which says, "Encapsulated in 2 different color of capsules (1) Black op/green op (4DE015) for 15 rings Lenny did not like

this color then changed to (2) pink cl/ Nat cl (2AU019) for 37 rings."

There are also discrepancies between the original batch record and the ANDA submission record with respect to the "weighed by" and "checked by" columns for empty capsules—lines 17 and 18—on the master formula page. The original record contains the initials of individuals who performed these operations whereas the ANDA submission record does not. Additional discrepancies include the failure of the operator's and checker's initials in the original batch record for each step in the encapsulation process to correspond to the same entries in the ANDA submission record.

ANDA 71–661, Oxazepam Capsules, 10-mg. The approval of ANDA 71–661 and for the 10-mg product relied on the in vivo bioequivalence study conducted on Chelsea's Oxazepam Capsules 30 mg, batch PD 1041. The requirement for an in vivo bioequivalence study on the 10-mg product was waived by FDA because it thought that an acceptable bioequivalence study had been conducted on the 30-mg product, both products met acceptable dissolution parameters, and both products were proportionally similar in their active and inactive ingredients. Because the validity and integrity of the bioequivalence data on the 30-mg product have been impugned by the untrue information concerning batch PD 1041, the bioequivalence of the 10-mg product is now in question.

Batch PD 1039 was used to conduct the required dissolution, analytical, and stability testing for the 10-mg product.

An omission and several discrepancies have been found in the original batch record and the ANDA submission record. Standard operating instructions are provided in both the original batch record and the ANDA submission record. However, the original batch record lacks the page under standard operating instructions—Granulation—containing the specific manufacturing steps used to manufacture the product. Under "Encapsulation," a discrepancy exists in the initials of the operator and checker who performed step XI as listed in the original batch record versus the ANDA submission record. Also under "Encapsulation," the data listed in step XIV of the original batch record differ from the data listed in step XIV of the ANDA submission record.

ANDA 71–662, Oxazepam Capsules, 15-mg. The approval of ANDA 71–662 for the 15-mg product relied on the in vivo bioequivalence study conducted on Chelsea's Oxazepam Capsules, 30 mg, batch PD 1041. The requirement for an in vivo bioequivalence study on the 15-mg product was waived by FDA because at that time the agency thought that an acceptable bioequivalence study had been conducted on the 30-mg product, both products met acceptable dissolution parameters, and both products were proportionally similar in their active and inactive ingredients. Because the validity and integrity of the bioequivalence data on the 30-mg product have been impugned by the untrue information concerning batch PD 1041, the bioequivalence of the 15-mg product is now in question.

Batch PD 1039 was used to conduct the required dissolution, analytical, and stability testing for the 15-mg product.

An omission and several discrepancies have been found between the original batch record and the ANDA submission record. The initials of the weigher and checker of the empty capsules and the salt for cleaning appear on the original batch record but not on the ANDA submission record. Standard operating instructions are provided in both the original batch record and the ANDA submission record; however, the original batch record lacks the page under standard operating instructions—Granulation—containing the specific manufacturing steps used to manufacture the product. Under "Encapsulation," a discrepancy exists in the initials of the operator and checker who performed the various steps as listed in the original batch record compared to the ANDA submission record. Also under "Encapsulation," the data listed in step XIV of the original batch record differ from the data listed in step XIV of the ANDA submission record.

ANDA 89–800, Perphenazine Tablets, 8 mg. In support of approval of ANDA 89–700, Chelsea submitted to FDA a batch production record for batch PD 1054. Product from this batch was used to conduct the required in vivo bioequivalence study, dissolution tests, analytical tests, and stability tests.

During the inspection, several dissimilarities were identified between the records for batch PD 1054 found at the firm and the records for the batch submitted to FDA with the ANDA.

The signature of the individual who approved the master formula in the original batch record is different from the signature of the individual who performed the same function in the ANDA submission record. In addition, the initials of the individuals who weighed out the ingredients are also different on each record. Under standard operating instructions, the initials of the operator who performed each step under "Pharmacy" and "Granulation" are different in the original batch record and in the ANDA submission record. The initials of the checker are also different in several steps under "Granulation" in both records. Finally, with respect to the compression of the tablets, the data for the actual run weight and the thickness as stated in step XIII in each record are different.

The investigator obtained documentation from the original batch records establishing that the film coating on batch PD 1054 was performed at Colorcon, Inc., West Pont, PA, on March 2, 1985. Different documentation was incorporated in the ANDA submission record stating that the film coating on batch PD 1054 was performed by Chelsea personnel at the Inwood facility. The firm stated in its November 9, 1989, letter to FDA that, "the investigator's observation that the film coating on batch PD 1054 was performed at Colorcon Inc., West Point, PA is true."

Conclusion

The discrepancies discussed above show that the batch records submitted in support of ANDA's 70–421, 70–422, 71–020, 71–021, 71–558, 71–661, 71–662, 71–663, and 89–700 contain untrue statements of material fact. These statements are material in that they concern matters that could have influenced approval of the applications. The agency was never afforded the opportunity to evaluate how the products covered by these ANDA's were actually manufactured because Chelsea submitted a revised batch record containing untrue statements to each ANDA. The agency based its approval of each ANDA on the revised batch record containing untrue statements.

The order of mixing ingredients, the blending times of ingredients, the screen sizes, the screening of the proper ingredients, and the color coating of the product are all significant steps in the manufacturing of a finished dosage product and may materially impact on the product's physical, chemical, and bioequivalence characteristics. Untrue statements submitted to an ANDA concerning any one (or more) of these significant manufacturing steps could alter the agency's evaluation of the required test data, especially the bioequivalency data. Chelsea submitted untrue statements concerning these manufacturing steps to each ANDA and, therefore, the agency cannot be assured of the identity, strength, quality, purity, and bioequivalency of each product.

Further, as delineated above, the firm submitted records to each ANDA that repeatedly contained untrue statements,

including omissions and discrepancies. Each untrue statement is material. The firm completely disregarded acceptable standards for recordkeeping and consistently allowed untrue statements to be incorporated into the records submitted to FDA (e.g., freely substituting names, dates, batch sizes, granulation data, tableting and ecapsulating data) or omitted important documents and data in the batch records submitted to FDA. Thus, the agency can no longer be assured as to the accuracy and validity of any of the data contained in each application.

Moreover, the discovery of these untrue statements constitutes new information (1) showing that the drugs are not shown to be safe for use under the conditions of use upon the basis of which the applications were approved; and (2) demonstrating that there is a lack of substantial evidence that the drugs will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling. Without reliable information as to the manufacturing processes used for the test batches on which the bioequivalence studies were performed, the agency cannot assume that the results of these studies are applicable to the approved, marketed products. In the absence of reliable data demonstrating bioequivalence to the listed drugs, there is a lack of evidence of safety and a lack of substantial evidence of effectiveness.

Proposed Action and Notice of Opportunity for Hearing

The Director of the Center for Drug Evaluation and Research has evaluated the information discussed above concerning the filing of untrue statements of material fact by Chelsea and, on the grounds stated, is proposing to withdraw approval of the following ANDA's:

ANDA 70–421, Verapamil Hydrochloride Tablets, 80 mg; ANDA 70–422, Verapamil Hydrochloride Tablets, 120 mg, ANDA 71–020, Disopyramide Phosphate Capsules, 100 mg; ANDA 71–021, Disopyramide Phosphate Capsules, 150 mg; ANDA 71–558, Perphenazine and Amitriptyline HCl Tablets, 4 mg/50 mg; ANDA 71–661, Oxazepam Capsules, 10 mg; ANDA 71–662, Oxazepam Capsules, 15 mg; ANDA 71–663, Oxazepam Capsules, 30 mg; and ANDA 89–700, Perphenazine Tablets, 8 mg.

Notice is hereby given to the holder of the ANDA's listed above and to all other interested persons, that the Director of the Center for Drug Evaluation and Research proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (the act), withdrawing approval of the foregoing ANDA's, and all amendments and supplements thereto. The Director finds:

(1) That the applications contain untrue statements of material fact; (2) that new evidence of clinical experience, not contained in the applications or not available to him until after the applications were approved, evaluated together with the evidence available to him when the applications were approved, shows that the drugs are not shown to be safe for use under the conditions of use upon the basis of which the applications were approved; and (3) on the basis of new information before him with respect to the drugs, evaluated together with the evidence available to him when the applications were approved, that there is a lack of substantial evidence that the drugs will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling.

In accordance with section 505 of the act and 21 CFR part 314, the applicant is hereby given an opportunity for a hearing to show why approval of the ANDA's should not be withdrawn.

An applicant who decides to seek a hearing shall file: (1) on or before July 23, 1990, a written notice of appearance and request for hearing, and (2) on or before August 21, 1990, the data, information, and analyses relied on to demonstrate that there is a genuine issue of material fact to justify a hearing. Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for a hearing, a notice of appearance and request for a hearing, information and analyses to justify a hearing, other comments, and a grant or denial of a hearing are contained in 21 CFR 314.200 (except that the limitations imposed by 21 CFR 314.200 (d)(1) and (d)(2) do not apply) and in 21 CFR part 12.

The failure of the applicant to file a timely written notice of appearance and request for hearing, as required by 21 CFR 314.200, constitutes an election by that person not to use the opportunity for a hearing concerning the action proposed, and a waiver of any contentions concerning the legal status of that person's drug products. Any new drug product marketed without an approved new drug application is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the applications, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request the hearing, making findings and conclusions, and denying a hearing.

All submissions pursuant to this notice of opportunity for hearing are to be filed in six copies. Except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Section 505(j)(6)(C) of the act requires that FDA remove from its approved product list (FDA's publication "Approved Drug Products with Therapeutic Equivalence Evaluations") (the list) any drug that was withdrawn for grounds described in the first sentence of section 505(e) of the act. If the agency determines that withdrawal of the drugs subject to this notice is appropriate, FDA will announce their removal from the list in the Federal Register notice announcing the withdrawal of approval of the drugs.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 505 (21 U.S.C. 355)) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82).

Dated: June 11, 1990.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 90–14474 Filed 6–21–90; 8:45 am]

BILLING CODE 4160–01–M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Dental Products Panel

Date, time, and place. July 11, 1990, 8 a.m., Conference Rm. E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 4 p.m.; Gregory Singleton, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1180.

General function of the committee. The committee reviews and evaluates available data on safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 29, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application for a dental laser.

Anesthetic and Life Support Drugs Subcommittee

Date, time, and place. July 20, 1990, 8:30 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; Isaac F. Roubein, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in the field of anesthesiology and surgery.

Agenda—open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 12, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss preclinical guidelines for reproduction studies for safety evaluation of neuromuscular blocking agents and general anesthetics for human use.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: June 15, 1990.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90–14438 Filed 6–21–90; 8:45 am]

BILLING CODE 4160–01–M

Advisory Committee; Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting: The following advisory committee meeting is announced:

Blood Products Advisory Committee

Date, time, and place. June 29, 1990, 8:30 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee

discussion, 9:30 a.m. to 10:30 a.m.; closed committee deliberations, 11 a.m. to 12 m.; open committee discussion, 1 p.m. to 3:30 p.m.; Linda A. Smallwood, Center for Biologics Evaluation and Research (HFB-400), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-496-4396.

General function of the committee. The committee reviews and evaluates available data on the safety, effectiveness, and appropriate use of blood products intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons who wish to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the contact person.

Open committee discussion. In the morning, the committee will sit as a medical device panel in accordance with the requirements of 21 CFR 814.40 and 814.44. The committee will review and discuss data presented by University Hospital Laboratories Corp. relevant to a premarket approval application (PMA) for a blood collection kit for HIV-1 antibodies testing which involves over-the-counter sale of a home blood sample collection kit, mailing the blood sample to a testing facility, and counseling/education concerning the test results by telephone. Discussion will concern safety and effectiveness issues including risks and benefits of the testing system.

Closed committee deliberations. The committee will discuss trade secret or confidential commercial information relevant to the cited PMA application. These portions will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

FDA is giving less than 15 days public notice of this meeting because of the need to complete the advisory committee review of this PMA within a limited time period. A meeting held on short notice is necessary for the committee to be able to make its recommendation to FDA on this matter within the time restrictions applicable to this particular PMA review.

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committee under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committee shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have

previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: June 20, 1990.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 90-14654 Filed 6-20-90; 2:46 pm]

BILLING CODE 4160-01-M

Health Resources and Services Administration

HIV Subacute Care Demonstration Projects; Availability of Funds and Response to Comments

AGENCY: Health Resources and Services Administration, PHS, DHHS.

ACTION: Response to public comments and notice of availability of funds.

SUMMARY: The Bureau of Health Resources Development (BHRD), Health Resources and Services Administration (HRSA), provides a response to public comments on the eligibility and review criteria, and announces that Fiscal Year (FY) 1990 funds are available for up to three Subacute Care Demonstration Project Grants to organizations providing subacute, medical and health care services to patients infected with the human immunodeficienty virus (HIV).

The Health Omnibus Programs Extension of 1988, Public Law 100-607, added title XXIV to the Public Health Service (PHS) Act. Section 2421 authorizes the Secretary to conduct three Subacute Care Demonstration projects to determine:

(1) The effectiveness and cost of providing subacute care services to patients infected with the HIV; and

(2) The impact of such services on the health status of HIV-infected patients.

Response to Public Comments

Proposed eligibility requirements and review and evaluation criteria were published for public comment in the Federal Register of April 6, 1990 (55 FR 12918). The HRSA received 14 letters during the 60 day comment period. The comments and HRSA's responses are summarized below.

Two respondents opposed the limitation of one demonstration per State. One respondent noted that California has three of the proposed 15 Metropolitan Statistical Areas (MSAs) and that there should be the flexibility to award more than one project per State. The second respondent believes that the limitation of one demonstration per State is inconsistent with the incidence data which demonstrates that New York's cumulative incidence exceeds that of the three ocmmunities in California by 25 percent. Furthermore, the same respondent believes that the population in New York is both more clinically and demographically diverse than any other State.

The HRSA has removed the restriction of one site per State. Nevertheless, applicants should note that HRSA remains concerned about meeting the legislative mandate that sites are to be geographically diverse. Among other considerations, a diversity in sites by States would demonstrate the impact of different reimbursement mechanisms, such as State Medicaid programs, on the cost of subacute services. An evaluation of cost is one important component to this demonstration program. Thus in addition to the evaluation ratings received by applicants and the recommendations of the Objective Review Committee, in the final selection of grantees, consideration will be given to geographic diversity as required by the statute.

Ten respondents supported the expansion of the list of eligible Metropolitan Statistical Areas (MSAs) to include more than the fifteen communities in the proposed announcement. In support of the Baltimore MSA, one respondent stated that this community meets the criteria of highest incidence of cases and the greatest need for subacute care services. A second respondent recommended that the eligible applicant pool be expanded to include the 20 cities with the highest number of cumulative cases of HIV infection, thus including Seattle as an eligible jurisdiction. Eight letters were received in support of including the Phoenix MSA. Several factors were given in justification of this recommendation, including: the lag time in reporting AIDS cases to the Centers for Disease Control (CDC); a large in-migration of cases (nearly 40%) initially diagnosed, and thus reported to the CDC, in other states; incidence rates that are as high as some of the communities listed among the eligible MSAs; subacute caseloads that often exceed the caseload of eligible MSAs; and consistency with the AIDS Service Demonstration program which includes Phoenix as an eligible jurisdiction.

Several valid reasons have been raised for expanding the list of eligible communities. Thus, in response to the numerous letters received and in order to maintain consistency with eligibility under the HRSA AIDS Service Demonstration Program, the HRSA has changed the eligibility requirements to the MSAs with a cumulative total of 700 or more AIDS cases as reported to the Centers for Disease Control through December, 1989. Twenty-nine MSAs are included under this requirement.

One respondent requested a realignment of counties from one MSA to another in order to increase HIV incidence for the non-eligible jurisdiction. The HRSA has determined that the use of an existing, standard reporting format for the alignment of counties within jurisdictions is necessary to maintain consistency among its AIDs programs. The Metropolitan Statistical Area is such a standard, and is also consistent with the collection and reporting of AIDs data by the Centers for Disease Control (CDC). Thus, the HRSA is not in a position to change the definition of specific MSAs.

One respondent proposed that the eligibility requirements be amended to include free standing home health agencies, such as Visiting Nurses Associations (VNAs), as examples of "singular subacute care facilities." Large urban VNAs have linkages to many hospitals and would be able to undertake a subacute care demonstration project.

The HRSA did not intend to eliminate potential applicants in its description of eligible organizations. In this particular situation, the VNA could be an eligible applicant if all other eligibility requirements were met. The HRSA has rewritten the program announcement to clarify program intent.

One respondent that funding should focus on HIV specific services frequently provided and necessary in long term care facilities, such as HIV prevention, substance abuse, ombudsman, staff education and training, and enhanced clinical services. The responent states that these services are necessary to meet the needs of the patient population.

The legislation is very specific about those services which must be provided and those which are optional. The services proposed by the respondent are not included in the legislation. While such services may be provided at the facility, grant funds from this demonstration may not be used to support those activities. Because of the

specificity of the legislation, the HRSA will retain the eligible services as proposed in the original notice.

One responent requested the removal of the requirement to perform studies of the effect of subacute care on patient health outcomes. Because such studies are methodologically complex, the respondent emphasized that the level of resources available in this program are not sufficient for credible studies.

The authorizing legislation requires that these demonstration projects address the impact of subacute services on the health status of patients. The HRSA needs to clarify, however, that these studies are not required to be conducted as part of the demonstration project by the grantee. The primary requirement of the grantee in this regard is to structure and make available a data collection system that can provide the type of information needed to carry out such studies. The HRSA will direct these studies.

One respondent noted that while research on neurological manifestations and psychological and mental health issues is important in the care of persons with HIV related illnesses, other research activities already underway, including clinical drug trials, studies of the wide range of manifestations of the HIV, and social research are of equal importance. Thus, the respondent recommends that the neurological and mental health research components not be required to qualify as a demonstration program.

The legislation requires that each demonstration project shall provide for other research to be carried out at the site of such demonstration project including—clinical research on AIDS, concentrating on neurological manifestations resulting from HIV infection; and the study of psychological and mental health issues related to AIDS. Because of the level of funding available for this program, HRSA believes that funding for this research should not necessarily be paid for out of the grant. Nevertheless, the grantee will, at a minimum, be responsible for making their data available to such research projects.

One respondent recommended the inclusion of ambulatory care, day health and certified home care programs as participants in these demonstration projects to increase the number and diversity of participating patients. Since these services are not included in the statute, HRSA is not in a position to require the services, nor is the HRSA limiting a grantee to only the required and optional services. The services noted above may be offered by a project, but are not reimburseable under this grant.

Having taken into consideration the comments received with respect to the proposed program announcement for the HIV Subacute Care Demonstration program, the HRSA presents the following final program announcement on the availability of funds.

Notice of Funds Availability

DATE: To receive consideration, grant applications must be received by the Grants Management Officer by August 21,1990. Applications shall be considered as meeting the deadline if they are either (1) Received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be accepted as proof of timely mailing. Applications which do not meet the deadline will be considered late applications and will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: Requests for technical or programmatic information should be directed to Mrs. Diane McMenamin, Chief, Community Development and Assistance Branch, Room 9A–22, 5600 Fishers Lane, Rockville, Maryland 20857, 301–443–9090. Grant applications (Form PHS 5161–1 with revised face sheet Standard Form 424, approved under OMB control number 0348–0043) and additional information regarding business administration or fiscal issues related to the awarding of grants under this notice may be requested from Ms. Glenna Wilcom, Grants Management Specialist, BHRD, 12300 Twinbrook Parkway, Suite 100A, Rockville, Maryland 20852, (301) 443–1440. The original and two copies of the application must be submitted to Ms. Wilcom.

SUPPLEMENTARY INFORMATION:

Program Background and Objectives

Based upon section 2421 of the PHS Act, the following terms or definitions apply:

(1) The term "patients infected with the HIV" means persons who have a disease, or are recovering from a disease, attributable to the infection of such a person with the HIV, and as a result of the effects of such disease, are in need of subacute care services.

(2) The term "subacute care" means medical and health care services for persons recovering from acute care episodes that are less intensive than the level of care provided by acute care hospitals, and may include skilled nursing care, hospice care, and other types of health services.

The Subacute Care Demonstration projects will enable each grantee to provide care and treatment to HIV infected patients and technical assistance to other health care providers in meeting the needs of HIV-infected persons. According to section 2421, a grantee must provide or arrange for the following:

(1) Subacute care;

(2) Emergency medical care and specialized diagnostic and therapeutic services as needed and where appropriate, either directly or through affiliation with a hospital that has experience in treating HIV infection;

(3) Case management services through existing programs whenever possible to ensure appropriate discharge planning for patients;

(4) Technical assistance in the form of education and training of physicians, nurses, and other health care professionals involved in subacute care of HIV-infected patients in other facilities in the region; and

(5) Clinical research concentrating on neurological manifestations resulting from the HIV, and the study of psychological and mental health issues related to HIV infection.

A grantee may elect to include the following services:

(1) Hospice services;

(2) Outpatient care; and

(3) Outreach activities in the surrounding community to hospitals and other health-care facilities serving HIV infected patients.

Eligibility Requirements

Public and private organizations which have the capacity to provide the required services, technical assistance, and research are eligible to apply, including: State and local Governments, nonprofit and for-profit organizations, and organizations representing a coalition of public and private agencies which together provide a wide range of health and social services to HIV infected people. Eligible applicants must be located within Metropolitan Statistical Areas (MSAs) with a cumulative total of 700 or more AIDS cases as reported by the Centers for Disease Control through December 1989. (See Appendix for a listing of these MSAs.)

The following are examples of the types of facilities providing subacute services that will be considered for funding: (a) A singular subacute care facility; (b) a group of subacute care facilities which together provide the range of subacute care services; and (c)

a hospital which has a dedicated unit/units providing or planning to provide subacute care services. Furthermore, while it is not necessary for the facility to provide services solely to HIV infected patients, the applicant must demonstrate that its data collection system can isolate information for these patients.

Availability of Funds

Approximately $1.5 million is available for FY 1990 for up to three Subacute Care Demonstration grants. The grants will be awarded competitively. The grant application must include a 4-year budget indicating how both grant funds and other resources necessary for financial solvency would be used each year of a 4-year project period. Funds are currently available for the first year of the project. Continued funding for future budget periods is subject to the availability of funds.

Collaboration/Coordination With Other HIV Programs

Applicants must provide documentation that the referral of patients and other collaborative efforts, such as care management, will be coordinated with the HRSA AIDS Service Demonstration Program, if operational, in the community. In addition, collaborative efforts should be maintained with other Federal programs, including the HRSA Pediatric AIDS Health Care Demonstration Projects; the HRSA AIDS Regional Education and Training Centers Program; numerous outreach and research projects of the Alcohol, Drug Abuse, and Mental Health Administration; the AIDS drug clinical trial studies and other research programs conducted by the National Institutes of Health; the Community Health Centers and Migrant Health Centers supported by HRSA; major private foundation supported programs; community-based AIDS service organizations; and State Medicaid Programs.

Review and Evaluation Criteria

The Subacute Care applications will be reviewed and evaluated by an objective review committee and rated on the basis of the following review criteria:

—Demonstration of the need for subacute care services, based upon factors such as numbers of persons not served due to a lack of available services or financial reimbursement;

—A plan to provide the required services and to assure a quality review system;

—Documentation of a plan to ensure the maintenance of financial viability over a 4-year project period;

—A plan to provide for the necessary adaptability of its subacute care services to reflect changes in treatment protocols and the demand for such services over a 4-year project period;

—Documentation that the proposed data collection system for its subacute care services will facilitate an evaluation of both the (1) Effectiveness and cost of providing different subacute care services, and (2) impact of such services on the health status of patients;

—Demonstration of a plan to ensure that services will be made available and provided to ethnic and racial minority populations most affected by the HIV within the MSA;

—Description of a research component on the clinical manifestations of neurological impairment and the psychosocial/mental health issues related to HIV;

—Documentation of referrals and other collaborative efforts, such as case management services, with the AIDS Service Demonstration Program in the MSA through contracts, memoranda of agreement, or other similar arrangements; and

—Documentation of a strategy to provide education and training on subacute care of HIV-infected patients to health care providers at other facilities in the MSA.

In addition to these review and evaluation criteria for individual applications, applicants should note that in the final selection of grantees, consideration will be given to geographic diversity as required by the statute.

Executive Order 12372

The AIDS Subacute Care Demonstration Program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intragovernmental review of Federal programs, as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application package under this notice will contain a listing of States which have chosen to set up such a review and will provide a point of contact in the States for the review. Applicants should promptly contact their State single point of contact (SPOC) and follow their instructions prior to the submission of an application. The SPOC has 60 days after the application deadline date to submit its review comments.

The OMB Catalog of Federal Domestic Assistance number for the Subacute Care Demonstration Project Grants is 13.909.

Dated: June 14, 1990.

Robert Harmon,

Administrator.

APPENDIX—METROPOLITAN STATISTICAL AREAS WITH 700+ CUMULATIVE CASES OF AIDS [1] THROUGH DECEMBER 1989

Metropolitan statistical areas	Number
1. New York, NY	22,665
2. Los Angeles, CA	8,265
3. San Francisco, CA	7,386
4. Houston, TX	3,432
5. Newark, NJ	3,354
6. Washington, D.C.	3,303
7. Miami, FL	2,995
8. Chicago, IL	2,916
9. Philadelphia, PA	2,455
10. Atlanta, GA	2,316
11. Boston, MA	1,983
12. Dallas, TX	1,980
13. San Juan, PR	1,978
14. San Diego, CA	1,635
15. Ft. Lauderdale, FL	1,614
16. Oakland, CA	1,393
17. Jersey City, NJ	1,377
18. Nassau-Suffolk, NY	1,277
19. Baltimore, MD	1,220
20. Seattle, WA	1,149
21. Tampa, FL	1,144
22. West Palm Beach, FL	1,069
23. New Orleans, LA	1,032
24. Denver, CO	1,005
25. Detroit, MI	1,002
26. Bergen-Passaic, NJ	985
27. Anaheim, CA	930
28. Riverside-San Bernadino, CA	743
29. Phoenix, AZ	719

[1] Centers for Disease Control, "HIV/AIDS Surveillance," Year End Edition, 1989.

[FR Doc. 90-14437 Filed 6-21-90; 8:45 am]
BILLING CODE 4160-15-M

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of July 1990.

Name: Advisory Commission on Childhood Vaccines

Date and Time: July 25-26, 1990, 9:00 a.m.—5:00 p.m.

Place: Conference Room D, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

The meeting is open to the public.

Purpose: The Commission: (1) Advises the Secretary on the implementation of the Program, (2) on its own initiative or as the result of the filing of a petition, recommends changes in the Vaccine Injury Table, (3) advises the Secretary in implementing the Secretary's

responsibilities under section 2127 regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions, (4) surveys Federal, State, and local programs and activities relating to the gathering of information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 2125(b), and advises the Secretary on means to obtain, compile, publish, and use credible data related to the frequency and severity of adverse reactions associated with childhood vaccines, and (5) recommends to the Director of the National Vaccine Program research related to vaccine injuries which should be conducted to carry out the National Vaccine Injury Compensation Program.

Agenda: Agenda items for the meeting will include but not be limited to: status report on the Vaccine Injury Compensation Program; status reports from the National Vaccine Program; discussion of Federal Excise Taxes on vaccines; and other pertinent issues.

Public comment will be permitted at the end of each meeting day. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation, by July 13th to Ms. Rosemary Havill, Vaccine Injury Compensation Program, Bureau of Health Professions, Health Resources and Services Administration, Room 7–90, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6593.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Vaccine Injury Compensation Program will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for presentation, but desire to make an oral statement, may sign up in Conference Room D before 10 a.m. July 25 and 26. These persons will be allocated time as time permits.

Anyone requiring information regarding the subject Council should contact Ms. Rosemary Havill, Vaccine Injury Compensation Program, Bureau of Health Professions, Room 7–90, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6593.

Agenda Items are subject to change as priorities dictate.

Date: June 18, 1990.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 90–14436 Filed 6–21–90; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Meeting of AIDS Research Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Clinical Research Subcommittee of the AIDS Research Advisory Committee, National Institute of Allergy and Infectious Diseases, on July 30, 1990, at the National Institutes of Health, Building 31C, Conference room 10, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 8:30 a.m. on July 30 to adjournment at 5 p.m. The committee will discuss the current status of the Clinical Research Subcommittee, plans for future meetings, and will review recent efforts by the Treatment Research Program. Attendance by the public will be limited to space available.

Ms. Patricia Randall, Office of Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717) will provide a summary of the meeting and a roster of the committee members upon request.

Jean S. Noe, Executive Secretary, AIDS Research Advisory Committee, Division of Acquired Immunodeficiency Syndrome, NIAID, NIH, Control Data Building, room 201N, telephone (301–496–0545), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855 Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: June 18, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–14482 Filed 6–21–90; 8:45 am]

BILLING CODE 4140–1–M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting at the National Digestive Diseases Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Digestive Diseases Advisory Board on July 23, 1990. The meeting will begin at 8 a.m. and adjourn at 5 p.m. The meeting, which will be open to the public, will be held at the Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, Virginia 22202. The meeting will include a conference on liver transplantation as well as discussion regarding the Board's activities and continued evaluation of the implementation of the long-range digestive diseases plan. The conference portion of the meeting will enable the Board to develop a position statement on selected issues regarding liver transplantation that will aid the Board in its subsequent recommendations. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. Raymond M. Kuehne, Executive Director, National Digestive Diseases Advisory Board, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 496–6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting this office.

Dated: June 18, 1990.

Betty J. Beveridge,

[FR Doc. 90–14483 Filed 6–21–90; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting of the National Diabetes Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the National Diabetes Advisory Board's meeting date which will be July 10, 1990. The meeting will begin at 8:30 a.m. and adjourn at approximately 3:45 p.m. The Board will meet at the Crystal Gateway Marriot Hotel, 1700 Jefferson Davis Highway, Arlington, Virginia 22202. The purpose of the meeting is to discuss the Board's activities and to continue evaluation of the implementation of the long-range plan to combat diabetes mellitus. Although the entire meeting will be open to the public, attendance will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

For any further information, please contact Mr. Raymond M. Kuehne, Executive Director, National Diabetes Advisory Board, 1801 Rockville Pike,

suite 500, Rockville, Maryland 20852, (301) 496-6045. His office will provide, for example, a membership roster of the Board and an agenda and summaries of the actual meetings.

Dated: June 18, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-14484 Filed 6-21-90; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-90-1917; FR-2606-N-77]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: June 22, 1990.

ADDRESSES: For further information, contact James Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD is publishing this Notice to identify Federal buildings and real property that HUD has detrermined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administrator of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a Notice in the **Federal Register** identifying the properties determined as suitable.

The properties identified in this Notice may ultimately be available for use by the homeless, but they are first subject to review by the landholding agencies pursuant to the court's Memorandum of December 14, 1988 and section 501(b) of the McKinney Act. Section 501(b) requires HUD to notify each Federal agency about any property of such agency that has been identified as suitable. Within 30 days from receipt of such notice from HUD, the agency must transmit to HUD: (1) Its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will no longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for user by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Homeless assistance providers interested in any property identified as suitable in this Notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 30 days from the date of this Notice. For complete details concerning the timing and processing of applications, the reader is encouraged to refer to HUD's **Federal Register** Notice on June 23, 1989 (54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: HQ-DA, Attn: DAEN-ZCI-P-Robert Conte; room 1E671 Pentagon, Washington, DC 20360-2600; (202) 693-4583; Corps of Engineers: Bob Swieconek, HQ-US Army Corps of Engineers, Attn: CERE-MN, 20 Massachusetts Avenue NW., Washington, DC 20415-1000; (202) 272-1750; U.S. Air Force: H. L. Lovejoy, Bolling AFB, HQ-USAF/LEER, Washington, DC 20332-5000; (202) 767-4191; GSA: Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 501-0067. (These are not toll-free numbers.)

Dated: June 14, 1990.

Paul Roitman Bardack,

Deputy Assistant Secretary for Program Policy Development and Evaluation.

Suitable Land (by State)

Georgia

Parcel A
VA Hospital Reservation
Industrial Blvd.
Dublin, GA Co: Laurens
Landholding Agency: GSA
Property Number: 549010062
Status: Excess
Comment: 1.11 acres; possible building restrictions.
GSA NO. 4-V-GA-445

Oregon

Tract 108 (Portion of)
Willow Creek Lake Project
Heppner, OR Co: Morrow
Location: Located up hill from the left abutment of the dam structure.
Landholding Agency: COE
Property Number: 319011687
Status: Unutilized
Comment: 2.25 acres; unimproved land; secured area with alternate access.

Suitable Buildings (by State)

Arkansas

S.W. Terry USAR Center
3600 South Pierce Street
Little Rock, AR Co: Pulaski
Landholding Agency: Army
Property Number: 219014785
Status: Excess
Comment: 22350 sq. ft.; 1 story plus mezzadine; masonry frame; possible asbestos in boiler room.

California

Building on 0.5 acres
Adjacent to Former Madera Employ. Trng. Ctr.

(See County), CA Co: Madera
Location: Located near 19500 Road 28½
Landholding Agency: GSA
Property Number: 549010063
Status: Excess
Comment: 800 sq. ft.; concrete/wood building; possible asbestos; access is from the Former Training Center; most recent use—storage building on 0.5 acres.
GSA NO. 9–G–CA–864A

Bldg. T–220
Artillery Street
Presidio of Monterey, CA Co: Monterey
Landholding Agency: Army
Property Number: 219014784
Status: Unutilized
Comment: 3343 sq. ft.; 2 story wood frame; most recent use—bowling center.

Florida

Bldg. CN–19
Moore Haven Lock
Okeechobee Waterway
Moore Haven, FL Co: Glades
Location: 1 mile east of highway 27
Landholding Agency: COE
Property Number: 319011688
Status: Unutilized
Comment: 1281 sq. ft.; 1 story frame residence; secured area with alternate access.

Indiana

Dwelling #2
Cagles Mill Lake
Poland, IN Co: Putnam
Location: 5 miles west of Polano on SR 42
Landholding Agency COE
Property Number: 319011686
Status: Unutilized
Comment: 872 sq. ft.; 1 story wood frame residence; fair condition.

Michigan

Bldg. 153
Calumet Air Force Station
Calumet, MI Co: Keweenaw
Landholding Agency: Air Force
Property Number: 189010886
Status: Excess
Comment: 4314 sq. ft.; 2 story concrete block facility; (radar tower bldg.) potential use—storage.

Bldg. 154
Calumet Air Force Station
Calumet MI, Co; Keweenaw
Landholding Agency: Air Force
Property Number: 189010887
Status: Excess
Comment: 8960 sq. ft.; 4 story concrete block facility; (radar tower bldg.) potential use—storage.

Bldg. 157
Calumet Air Force Station
Calumet, MI Co: Keweenaw
Landholding Agency: Air Force
Property Number: 189010888
Status: Excess
Comment: 3744 sq. ft.; 1 story concrete/steel facility; (radar tower bldg.); potential use—storage.

Texas

11255 SGT F. Markle St.
Biggs Army Airfield
Fort Bliss
El Paso, TX Co: El Paso
Landholding Agency: Army
Property Number: 219014694
Status: Unutilized
Comment: 1052 sq. ft.; 1 story cinder block frame; off-site use only; most recent use—storage.

[FR Doc. 90–14357 Filed 6–21–90; 8:45 am]
BILLING CODE 4210–29–M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–90–3074; FR–2807–N–2]

Housing Assistance Payments Program—Moderate Rehabilitation; Correction

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of Funding Availability for Section 8 Moderate Rehabilitation Assistance—Correction.

SUMMARY: On June 14, 1990, The Department published a Notice of Funding Availability (NOFA) announcing the availability of $168,717,000 of fiscal year 1989 carryover funds for HUD's section 8 Moderate Rehabilitation Program. The funds were made available to help meet special housing needs in two major disaster areas of the country—the areas inspected by Hurricane Hugo and by the 1989 California earthquake. This Notice corrects the June 14, 1990 document by adding one California county to the listing of designated jurisdictions invited to apply for available moderate rehabilitation units.

DATES: The application due date of July 16, as previously published, remains unchanged.

FOR FURTHER INFORMATION CONTACT: Lawrence Goldberger, Director, Office of Elderly and Assisted Housing, Room 6130, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755–5720. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Interested persons are invited to review the content of the notice of funding availability published in the June 14, 1990 **Federal Register** for additional details. This document's purpose is to correct the inadvertent omission of Contra Costa County, California, from a listing of designated Region IX jurisdictions from which public housing agencies are eligible to apply for assistance under the NOFA.

Accordingly, the listing of Region IX places appearing at 55 FR 24204 (June 14, 1990) in the third column of the Notice entitled "Section 8 Housing Assistance Payments Program—Moderate Rehabilitation" is corrected to read as follows:

Region IX

Contra Costa County
Marin County
Solano County
San Francisco County
Alameda County
Monterey County
San Benito County
San Mateo County
Santa Clara County
Santa Cruz County
Isleton City (in Sacramento County)
Tracy City (in San Joaquin County)

PHAs in any of the designated jurisdictions are invited to apply for units in accordance with the provisions of 24 CFR 882.501 and the other information and specifications set out in the June 14, 1990 notice.

Dated: June 19, 1990.

Grady J. Norris,

Assistant General, Counsel for Regulations.

[FR Doc. 90–14617 Filed 6–21–90; 8:45 am]
BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–010–3110–10–9202–GPO–0110; NM NM 80744]

Issuance of Mineral Exchange Conveyance Document; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States issued an exchange conveyance document to New Mexico and Arizona Land Company on April 10, 1990, for the oil and gas in certain land and all minerals in other land existing upon, in or under the following described land in Cibola, Catron, and Socorro Counties, New Mexico, pursuant to section 206 of the Act of October 21, 1976 (43 U.S.C. 1716) and section 502 of the Act of December 31, 1987 (101 Stat. 1544):

New Mexico Principal Meridian

T. 4 N., R. 3 W.,
Sec. 24, NE¼ and S½.
T. 3 N., R. 4 W.,
Sec. 4, lots 3, 4, S½NW¼, and SW¼;
Sec. 22, all;
Sec. 24, E½;
T. 3 N., R. 6 W.,
Sec. 4, S½N½ and S½.
T. 4 N., R. 6 W.,
Sec. 10, all; (oil & gas)

Sec. 12, NE¼, N½NW¼, and SE¼NW¼; (oil & gas)
Sec. 24, NW¼. (oil & gas)
T. 1 N., R. 12 W.,
Sec. 3, lots 1–4, inclusive, S½N½, and SW¼;
Sec. 4, lots 1–4, inclusive, S½N½, and S½;
Sec. 7, lots 1–4, inclusive, W½E½, S½SE¼ NE¼, and NE¼SE¼.
T. 3 N., R. 14 W.,
Sec. 22, all;
Sec. 23, all;
Sec. 35, all;
T. 2 N., R. 15 W.,
Sec. 10, all;
Sec. 13, all;
Sec. 14, all;
Sec. 17, E½E½; (oil & gas)
Sec. 17, W½E½ and W½;
Sec. 20, N½;
Sec. 21, all;
Sec. 23, all;
Sec. 24, all;
Sec. 25, all;
Sec. 26, all;
Sec. 28, N½ and SW¼;
Sec. 29, E½SW¼, SW¼SW¼, and SE¼;
Sec. 30, lots 1, 3, and NE¼NW¼;
Sec. 34, E½;
Sec. 35, all.
T. 9 N., R. 15 W.,
Sec. 10, all;
Sec. 12, all;

Containing 15,944.16 acres.

In exchange for the mineral interests in the land described above, the oil and gas in certain land all minerals in other land existing upon, in or under the following described land in Cibola County, New Mexico, were reconveyed to the United States.

New Mexico Principal Meridian

T. 6 N., R. 11 W.,
Sec. 31, lots 1–4, inclusive, E½, and E½ W½;
Sec. 33, all;
T. 6 N., R. 12 W.,
Sec. 3, lots 1–4, inclusive, S½N½, and S½;
Sec. 11, all;
Sec. 13, all;
Sec. 15, all;
Sec. 23, all;
Sec. 25, all;
T. 7 N., R. 12 W.,
Sec. 29, all;
Sec. 33, all;
T. 8 N., R. 12 W.,
Sec. 5, lots 1–4, inclusive, S½N½, and S½;
Sec. 7, lots 1–4, inclusive, E½, and E½W½; (oil & gas)
Sec. 17, all; (oil & gas)
Sec. 19, lots 1–4, inclusive, E½, and E½ W½.
T. 8 N., R. 13 W.,
Sec. 1, lots 1–4, inclusive, S½N½, and S½;
Sec. 11, all;
Sec. 13, all;
Sec. 15, all;
Sec. 21, all;
Sec. 23, all;
Sec. 25, all;
Sec. 27, all;
Sec. 29, all;
T. 8 N., R. 13 W.,
Sec. 33, all;
Sec. 35, all.

Containing 15,946.28 acres.

The purpose of the exchange was to consolidate Federal mineral ownership for the Federal Government within El Malpais National Conservation Area (NCA) and National Monument (NM). The mineral interests acquired in the exchange will automatically become part of El Malpais NCA and NM without further action by the Bureau of Land Management and shall be managed in accordance with all laws, rules, and regulations applicable under section 502 of Public Law 100–225 of December 31, 1987, which established El Malpais NCA and NM.

The exchange was consistent with land ownership adjustments as set forth in the Record of Decision for the Rio Puerco Management Plan (RMP) approved January 16, 1986, the Socorro RMP approved February 1989, and section 502 of Public Law 100–225 of December 31, 1987. The value of the mineral estates exchanged was equal.

Dated: June 14, 1990.

Monte, G. Jordan,

Associate State Director.

[FR Doc. 90–14465 Filed 6–21–90; 8:45 am]

BILLING CODE 4310–FB–M

[4333–02]

Montana Off-Road Vehicle Restriction

AGENCY: Bureau of Land Management, Miles City District, South Dakota Resource Area, Interior.

ACTION: Implementation of revised visitor use restrictions on Fort Meade Recreation Area.

SUMMARY: Restrictions for the use of Fort Meade Recreation Management Area near Sturgis, South Dakota, were originally published (on page 7321 of the **Federal Register**) February 18, 1983. They were published under the authority of section 202 (c)(5) and (a)(1) of the Sikes Act (88 Stat. 1369 and 1371) and as a result of the approval of the Fort Meade Recreation Management Plan.

The original regulations have been revised because of increased visitor use to the area. These amended regulations provide for the continuing safety and health of recreation users.

Maps describing the roads which are open for motorized vehicular travel have been posted at all of the Fort Meade Recreation Area entrances.

1. All motorized vehicle use is limited to maintained roads.

2. The use, possession afield, or discharge of all firearms is prohibited on the south end of the Fort Meade Area (all land south of Highway No. 34), except during such special big game seasons as may be established by the South Dakota Game, Fish and Parks Department.

The use and discharge of all firearms is prohibited on the North Unit from Highway No. 34 north to the posted boundary and within the marked boundaries around Fort Meade Reservoir.

Hunting with firearms is permitted in the remainder of the North Unit during seasons established by the State of South Dakota.

3. The possession and use of fireworks is prohibited.

4. The taking or attempt to take any wild animal by trap or snare is prohibited.

5. Camping is restricted to designated campsites.

6. Open fires are prohibited except in established fire grates and pits.

7. Dumping or littering is prohibited.

8. Horses are prohibited within the area designated as the Alkali Creek Trailhead and Recreation Site and as otherwise posted.

9. Equestrian use within the Alkali Creek Horse Camp is governed by posted regulations.

The purpose of these restrictions is to minimize hazards to visitors and surrounding residences, minimize the possibility of wildfire, reduce soil erosion, vegetation loss, wildlife habitat loss, and damage to historic and cultural resources.

These regulations apply to the public lands in Sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, T. 5 N., R. 5 E., BHM; and Sections 25, 26, 27, 34, 36, T. 6 N., R. 5 E., BHM.

The public lands within the designated area will remain open to other resource and recreation uses. Administrative access by Off-Road Vehicles is allowed for the Bureau of Land Management and BLM contractors, licensees, permittees, and all other Federal, State, and County employees when on official duty.

Pursuant to section 204(a)(2) of the Sikes Act any person who knowingly violates or fails to comply with any regulations prescribed under section 202(c)(5) of the Act shall be fined not more than $500.00 or imprisoned not more than six (6) months, or both.

EFFECTIVE DATE: Revised rules effective July 23, 1990.

ADDRESSES: Maps of the Fort Meade Recreation Area are available at the South Dakota Resource Area Office located at 310 Roundup Street, Belle Fourche, South Dakota 57717

FOR FURTHER INFORMATION CONTACT: Dennis Bucher, Outdoor Recreation Planner, Bureau of Land Management, 310 Roundup Street, Belle Fourche, South Dakota 57717, (605) 892-2526.

Mat Millenbach,

District Manager.

[FR Doc. 90-14466 Filed 6-21-90; 8:45 am]

BILLING CODE 4310-DN-M

[AZ-050-4214-10; AZA-13393, 400, 401, 402]

Arizona; Proposed Modification of Withdrawals and Opportunity for Public Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Navy has filed an application to modify Secretarial Orders dated July 2, 1902, January 31, 1903, September 30, 1904, and March 14, 1929, to transfer jurisdiction over 26.794 acres from the Bureau of Reclamation to the U.S. Navy (San Bruno, California). Bureau of Reclamation has concurred. This parcel was formerly the headquarters site for the Yuma Projects Office, Bureau of Reclamation, which is now located at the Bureau of Reclamation's Desalting Plant site. The U.S. Marine Corps Air Station (which surrounds the subject parcel) needs the land for expansion purposes. The lands are currently segregated from settlement, sale location, or entry under the public land laws, including the mining laws, and will remain so segregated.

DATES: Comments and requests for meeting should be received on or before September 20, 1990.

ADDRESSES: Comments and meeting requests should be sent to the Arizona State Director, Bureau of Land Management, P.O. Box 16563 (3707 N. Seventh Street), Phoenix, Arizona 85011.

FOR FURTHER INFORMATION CONTACT: John Mezes, Bureau of Land Management, Arizona State Office, 602-640-5547.

SUPPLEMENTARY INFORMATION: On June 18, 1990, the U.S. Navy filed an application to modify the four above-referenced Secretarial Orders to transfer jurisdiction over the following described lands from the Bureau of Reclamation to the U.S. Navy:

Gila and Salt River Meridian

T. 9 S., R. 23 W., sec. 11, Tract B.

The area described aggregate 26.794 acres in Yuma County. For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed modification of withdrawals may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed modification of withdrawals.

All interested persons who desire a public meeting for the purpose of being heard on the proposed modification of withdrawals must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the Federal Register at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

Dated: June 18, 1990.

R. Keith Miller,

Acting State Director.

[FR Doc. 90-14492 Filed 6-21-90; 8:45 am]

BILLING CODE 4310-32-M

INTERNATIONAL TRADE COMMISSION

Services; Compilation and Identification of U.S. Measures That May Not Conform With Principles the United States Is Seeking in the Uruguay Round

AGENCY: International Trade Commission.

ACTION: Institution of investigation.

EFFECTIVE DATE: June 15, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Kollins (202-252-1441), Office of Industries, U.S. International Trade Commission, Washington, DC 20436.

BACKGROUND AND SCOPE OF INVESTIGATION: The Commission instituted investigation No. 332-293, following receipt on May 29, 1990 of a letter from the United States Trade Representative (USTR), requesting, under authority delegated by the President, that the Commission conduct an investigation pursuant to section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) to provide information for use by USTR in connection with trade negotiations on services in the Uruguay Round of mulitilateral trade negotiations

As requested by USTR, the Commission will undertake a study to provide a report which—

(1) Compiles information provided to USTR by State governments in response to a USTR questionnaire on state services regulations and examines applicable information on State and Federal regulations included in the Commission's previously submitted report (Service Sector Profiles and Barriers to Trade in Services: Phase II, investigation No. 332-257); and

(2) Identifies, to the extent practical from the information reported to USTR by State governments, U.S. measures (State and Federal) that may not be in conformity with the principles governing trade in services proposed by the U.S. Government in the Uruguay Round. These principles include the 10 principles identified in the U.S. services proposal which accompanied the USTR request letter.

USTR requested that the Commission submit a preliminary interim staff report containing a tabulation of the questionnaire responses and a preliminary assessment by July 31, 1990, and that the Commission submit its final report by October 31, 1990. The Commission's confidential reports in connection with this investigation are classified by USTR.

WRITTEN SUBMISSIONS: No public hearing has been scheduled in this matter. However, interested persons are invited to submit written statements concerning the investigation. Commercial or financial information which a submitting party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rule of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be available for inspection by interested persons. To be assured of consideration by the Commission, written statements should be submitted at the earliest possible date, but not later than September 24, 1990. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal at (202) 252-1810.

By order of the Commission.

Issued: June 15, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-14457 Filed 6-21-90; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage In Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

Parent corporation and address of principal office: Sysco Corporation, 1390 Enclave Parkway, Houston, Texas 77077–2027.

Wholly-owned subsidiaries which will participate in the operations, and state(s) of incorporation:

1. Allied-Sysco Food Services, Inc.—CA
2. Arrow-Sysco Food Services, Inc.—DE
3. Bell/Sysco Food Services, Inc.—NC
4. Deaktor/Sysco Food Services Co.—PA
5. Dipaolo/Sysco Food Services, Inc.—OH
6. Foodservice Specialists, Inc.—DE
7. Grants-Sysco Food Services, Inc.—MI
8. Hardin's-Sysco Food Services, Inc.—TN
9. Koon-Sysco Food Services, Inc.—KY
10. Lankford-Sysco Food Services, Inc.—MD
11. Maine/Sysco, Inc.—ME
12. Major-Sysco Food Services, Inc.—CA
13. Mid-Central/Sysco Food Services, Inc.—MO
14. Miesel/Sysco Food Service Co.—MI
15. Nobel/Sysco Food Services Co.—CO
16. Olewine's-Sysco Food Services Co.—PA
17. Robert Orr-Sysco Food Services Company—TN
18. Pegler-Sysco Food Services Co.—NE
19. Sugar Foods, Inc.—DE
20. The Sygma Network, Inc.—DE
21. Continental Food Services, Inc.—DE
22. Sysco/Continental Food Services of Portland, Inc.—DE
23. Sysco/Continental Food Services of Seattle, Inc.—DE
24. Sysco/Continental Institutional Food Services of Macon, Inc.—DE
25. Sysco/Continental Keil Food Services, Inc.—DE
26. Sysco/Continental Mulberry Food Services, Inc.—DE
27. Sysco Food Services Smelkinson Food Services, Inc.—DE
28. Sysco Food Services, Inc.—TX
29. Sysco Food Services of Arizona, Inc.—DE
30. Sysco Food Services of Atlanta, Inc.—DE
31. Sysco Food Services of Beaumont, Inc.—TX
32. Sysco Food Services of Central Florida, Inc.—DE
33. Sysco Food Services—Chicago, Inc.—DE
34. Sysco Food Services of Cleveland, Inc.—DE
35. Sysco Food Services of Eureka, Inc.—DE
36. Sysco Food Services of Indianapolis, Inc.—DE
37. Sysco Food Services of Iowa, Inc.—DE
38. Sysco Food Services of Los Angeles, Inc.—DE
39. Sysco Food Services of Minnesota, Inc.—DE
40. Sysco Food Services of Oklahoma, Inc.—DE
41. Sysco Food Services of South Florida, Inc.—DE
42. H.F.P.—Sysco Foods Services, Inc.—VA
43. Sysco Food Systems, Inc.—TX
44. Sysco/Frost Pack Food Services, Inc.—MI
45. Sysco/General Food Services, Inc.—ID
46. Sysco/Louisville Food Services Co.—DE
47. Sysco/Rome Food Service, Inc.—GA
48. Vogel/Sysco Food Service, Inc.—AR

Noreta R. McGee,

Secretary.

[FR Doc. 90–14517 Filed 6–21–90; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Water Act; Philadelphia, PA

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on May 23, 1990, a proposed Consent Decree in *United States* v. *City of Philadelphia*, Civil Action No. 88–6791, was lodged with the United States District Court for the Eastern District of Pennsylvania. The Consent Decree requires defendant to pay a civil penalty of $1.5 million and to undertake measures to ensure future compliance with the Clean Water Act, 33 U.S.C. 1251 *et seq.*, and the applicable permit.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Philadelphia*, DOJ Ref. 90–5–1–1–929C.

The proposed Consent Decree may be examined at the Office of the United States Attorney, United States Court House, 3310 U.S. Courthouse, Independence Mall West, 601 Market St., Philadelphia, Pennsylvania 19106. Copies of the Consent Decree may also be examined at the Environmental Enforcement Section, Environment and Natural Resources Division of the U.S. Department of Justice, room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice at the above address. In requesting a copy, please enclose a check in the amount of $6.50 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90–14540 Filed 6–21–90; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, Time and Place: July 10, 1990, 9:30 a.m.–12:00 noon, Rm. S2217, Frances Perkins, Department of Labor Building, 200 Constitution Ave, NW., Washington, DC 20210.

Purpose: To discusss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. section 552b(c)(1). The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For Further Information, Contact: Fernand Lavallee, Director, Trade Advisory Group, Phone: (202) 523–2752.

Signed at Washington, DC this 18th day of June, 1990.

Jorge Perez-Lopez,

Acting Deputy Under Secretary, International Affairs.

[FR Doc. 90–14524 Filed 6–21–90; 8:45 am]

BILLING CODE 4510–28–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; American Tree Co., et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether

the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 2, 1990.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 2, 1990.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC this 11th day of June 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
American Tree Co., Inc. (company)	Coxsackie, NY	6/11/90	5/31/90	24,490	Christmas Trees.
Chatham County of Ohio (workers)	Heath, OH	6/11/90	5/31/90	24,491	Chairs, barstools & cabinets.
Circle Dress Co. (ILGWU)	E. Orange, NJ	6/11/90	4/16/90	24,492	Ladies' garments.
Clark/American (GCIU)	Baltimore, MD	6/11/90	6/4/90	24,493	Checks.
Crucible, Inc. (USWA)	Carrollton, GA	6/11/90	5/14/90	24,494	Steel tubes.
Dixon Ticonderoga Co	Sandusky, OH	6/11/90	6/01/90	24,495	Crayons.
Duke Mfg., Co. (Workers)	St. Louis, MO	6/11/90	5/31/90	24,496	Sinks.
Exxon/Western Exploration Div. (Workers)	Englewood, CO	6/11/90	5/29/90	24,497	Oil & gas.
Exxon/Western Exploration Div. (workers)	Midland, TX	6/11/90	5/29/90	24,498	Oil & gas.
Fante Clothing (ILGWU)	Philadelphia, PA	6/11/90	5/29/90	24,499	Misses' skirts, slacks & shorts.
Force Outboards (workers)	Gallipolis, OH	6/11/90	5/18/90	24,500	Boat engines.
Future Cedar Product, Inc	Amanda Park, WA	6/11/90	5/30/90	24,501	Cedar shakes & shingles.
(The) Gary Williams Co. (workers)	Denver, CO	6/11/90	5/16/90	24,502	Oil & gas.
Harbor Wood Treating (workers)	Aberdeen, WA	6/11/90	5/09/90	24,503	Shakes & shingles.
Independent Oil Well Cementing (workers)	Fairfield, IL	6/11/90	5/29/90	24,504	Oil & gas.
Jim Gold Logging (company)	Hoquiam, WA	6/11/90	5/01/90	24,505	Lumber.
Langshaw Mfg Co., Inc. (workers)	New Bedford, MA	6/11/90	5/30/90	24,506	Ladies blouses.
Magee's Enterprises (company)	Elma, WA	6/11/90	5/07/90	24,507	Lumber.
McDonald Oil Co. (workers)	Smackover, AK	6/11/90	5/30/90	24,508	Oil & gas.
McDowell Bros. Oil Co., Inc. (workers)	Albion, IL	6/11/90	5/30/90	24,509	Oil & gas.
NAPCO Scientific (SMWU)	Tualatin, OR	6/11/90	6/01/90	24,510	Laboratory equipment.
Pandora Industries (workers)	New York, NY	6/11/90	5/21/90	24,511	Knitwear.
(The) Playamill of (workers)	Dover-Foxcroft, MEG	6/11/90	5/30/90	24,512	Toys & accessories.
Quality Cedar (workers)	Neilton, WA	6/11/90	5/15/90	24,513	Shakes & shingles.
Roytex, Inc. (workers)	Meriden, MS	6/11/90	5/31/90	24,514	Robes.
Texaco, Inc. (workers)	Bellaire, TX	6/11/90	5/25/90	24,515	Oil & gas.
Tektronix, Inc. (workers)	Beaverton, OR	6/11/90	5/30/90	24,516	Semi-conductor test systems.

[FR Doc. 90-14525 Filed 6-21-90; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-24, 114]

Blackbourn, Inc., Olivia, MN; Negative Determination Regarding Application for Reconsideration

By applications dated May 21-24, 1990, former workers of Blackbourn requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on May 1, 1990 and published in the **Federal Register** on May 30, 1990 (55 FR 21955).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous:

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The former workers claim that business was lost to foreign companies in 1982 and 1987. The former workers state that the remaining production at Olivia was transferred to a company plant in Eden Prairie, Minnesota.

Investigation findings show that the Olivia workers produced video and audio tape packages and ring binders. The findings also show that the Olivia plant closed on March 1, 1990 and all production was transferred to a company plant in Eden Prairie, Minnesota.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligiblity Requirements of the Trade Act was not met. Increased imports must have contributed importantly to declines in sales or production and employment at Olivia. However, during the relevant time period of the petition, worker separations occurred as a result of a transfer of production to another company plant in Eden Prairie, Minnesota. A domestic transfer of production would not form a basis for worker group certification.

Also, declines in sales or production and employment in the period from 1982 through 1987 are beyond the scope of this investigation. Section 223(b)(1) of the Trade Act does not permit the certification of workers laid off more than one year prior to the date of the petition which in this case is February 27, 1990.

Conclusion

After review of the application and investigative findings, I conclude thast there may has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of

Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC., this 15th day of June 1990.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Acturial Services, UIS.

[FR Doc. 90-14526 Filed 6-21-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24, 175]

Cricketeer Manufacturing Co., Harrodsburg, KY; Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Correction

This notice corrects the May 2, 1989 impact date for the subject firm published on June 13, 1990 in the Federal Register on page 23991 of FR Document 90-13714.

The impact date is corrected to read "June 23, 1989" instead of March 2, 1989.

Signed at Washington, DC, this 14th day of June 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-14527 Filed 6-21-90; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Johnson Controls, Inc.; Negative Determination Regarding Application for Reconsideration

TA-W-24,062	Milwaukee, Wisconsin.
TA-W-24,062A	North Greenbay Avenue Plant.
TA-W-24,062B	E. Chicago Street Plant.
TA-W-24,062C	W. Boden Court Plant.
TA-W-24,062D	E. Michigan Plant.
TA-W-24,062E	N. Humboldt Avenue Plant.
TA-W-24,063	Glendale, Wisconsin.

By an application dated May 15, 1990, District #10 of the International Association of Machinists (IAM) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on April 20, 1990 and published in the Federal Register on May 3, 1990 (55 FR 18687).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that worker separations have occurred since 1984 because of the transfer of production of Reynosa, Mexico. It is also claimed that future machining will also be shipped to Reynosa.

The Humboldt plant produces automatic temperature controls (ATC) and the Glendale, Wisconsin plant produces building automation systems (BAS). No layoffs were reported at the E. Chicago Street plant, a shipping facility or the E. Michigan plant, a prototype development plant. Also, the Boden Court plant just started operations in late 1989 and the Greenbay plant housed the Battery Division headquarters which is not applicable to this investigation.

Investigation findings show that workers at the Humboldt plant were certified (TA-W-19, 439) eligible to apply for adjustment assistance through June 29, 1989. Since the expiration of the certification TA-W-19,439, company imports of automatic temperature controls (ATC) declined relative to company production in the first five months for FY 1990 compared to the same period of FY 1989. Investigation findings also show increased sales and production of ATC at Humboldt in FY 1989 compared to FY 1988 and the first five months of FY 1990 compared to the same period in FY 1989.

Other investigation findings show that workers at the Glendale plant produce building automation systems (BAS). The findings show increased production of BAS in FY 1989 compared to FY 1988 and in the first five months of FY 1990 compared to the same period in FY 1989. Company imports of BAS were small in FY 1989 compared to FY 1988. Company imports of BAS declined relative to company production in the first five months for FY 1990 compared to the same period of FY 1989.

Other findings show that in June 1989, the company tranferred the production of printed circuit boards from the glendale plant to other domestic facilities. The printed circuit board accounts for a major part of the production value of a BAS. A domestic transffer of production would not provide a basis for a worker group certification.

With respect to layoffs in the period between 1984 and 1989, worker separations prior to one year of the date of the petition (February 16, 1990) cannot be considered for adjustment assistance purposes. Section 223(b)(1) of the Trade Act does not permit the certification of workers laid off more than one year prior to the date of the petition.

Also, investigation findings show that sales, production and employment data were collected through February 1990. If worker separations occurred after the Department's determination was issued, the Department would entertain a new petition for adjustment assistance. The Department's policy on refiling allows a worker group to file six months after the issuance of a denial.

Conclusion

After review of the application and investigative findings. I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 13th day of June 1990.

Barbara Ann Farmer,

Director, Office of Program Management, UIS.

[FR Doc. 90-14528 Filed 6-21-90; 8:45 am]

BILLING CODE 4510-30-M

Employment and Training Administration

[TA-W-24,210]

Keene Corp; Metal Products Division; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance on May 25, 1990, applicable to all workers of Keene Corporation, Metal Products Division, Parkersburg, West Virginia. The notice will soon be published in the Federal Register.

Based on new information from the company, additional workers were separated after the May 25, 1990 termination date. The notice, therefore is amended by deleting the May 25, 1990 termination date and adding a new termination date of July 1, 1990.

The amended notice applicable to TA-W-24,210 is hereby issued as follows:

All workers of Keene Corporation, Metal Products Division, Parkersburg, West

Virginia who became totally or partially separated from employment on or after January 1, 1990 and before July 1, 1990 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 13th day of June 1990.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 90-14529 Filed 6-21-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24,069]

Performance Papers, Inc., Mills C and D; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 25, 1990, applicable to all workers of Performance Papers, Inc., Mills C and D, Kalamazoo, Michigan. The notice was published in the **Federal Register** on May 16, 1990 (55 FR 20330).

Based on new information from the union and the company, additional workers were laid off gradually throughout 1989 until the mills closed in November, 1989. Many of these layoffs were prior to the September 1, 1989 impact date. The notice, therefore is amended by deleting the September 1, 1989 impact date and adding a new impact date of February 15, 1989.

The amended notice applicable to TA-W-24,069 is hereby issued as follows:

All workers of Performance Papers, Inc., Mills C and D, Kalamazoo, Michigan who became totally or partially separated from employment on or after February 15, 1989 and before April 1, 1990 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 13th day of June 1990.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 90-14530 Filed 6-21-90; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Extended Benefits; Ending of Extended Benefit Period in the State of Puerto Rico

This notice announces the ending of the Extended Benefit Period in the State of Puerto Rico, effective on March 31, 1990.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. Under the Extended Benefit Program, individuals who have exhausted their rights to regular unemployment benefits (UI) under permanent State (and Federal) unemployment compensation laws may be eligible, during an extended benefit period, to receive up to 13 weeks of extended unemployment benefits, at the same weekly rate of benefits as previously received under the State law. The Federal-State Extended Unemployment Compensation Act as implemented by State unemployment compensation laws and by part 615 of title 20 of the Code of Federal Regulations (20 CFR part 615).

Extended Benefits are payable in a State during and Extended Benefit Period which is triggered "on" when the rate of insured unemployment in the State reaches the State trigger rate set in the Act and the State law. During an Extended Benefit Period, individuals are eligible for a maximum of up to 13 weeks of benefits, but the total of Extended Benefits and regular benefits together may not exceed 39 weeks.

The Act and the State unemployment compensation laws also provide that an Extended Benefit Period in a State will trigger "off" when the rate of insured unemployment in the State is no longer at the trigger rate set in the law. A benefit period actually terminates at the end of the third week after the week for which there is an off indicator, but not less than 13 weeks after the benefit period began.

An Extended Benefit Period commenced in the State of Puerto Rico on December 31, 1989, and has now triggered off.

Determination of an "off" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State for the period consisting of the week ending on March 10, 1990, and the immediately preceding twelve weeks, fell below the State trigger rate, so that for that week there was an "off" indicator in the State.

Therefore, the Extended Benefit Period in the State terminated with the week ending March 31, 1990.

Information for Claimants

The State employment security agency will furnish a written notice to each individual who is filing claims for Extended Benefits of the ending of the Extended Benefit Period and its effect on the individual's right to Extended Benefits. 20 CFR 615.13(d)(3).

Persons who wish information about their rights to Extended Benefits in the State named above should contact the nearest State employment service office in their locality.

Signed at Washington, DC on June 12, 1990.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 90-14532 Filed 6-21-90; 8:45 am]

BILLING CODE 4510-30-M

Job Training Partnership Act: Native American Programs Final Total Allocation, Allocation Formulas and Formula Rationales for Program Year 1990 Regular Program and Calendar Year 1990 Summer Youth Employment and Training Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration of the Department of Labor is publishing the final Native American allocations, distribution formulas, and rationales for the Program Year 1990 (July 1, 1990–June 30, 1991) title IV–A regular program funded under the Job Training and Partnership Act and for the Calendar Year 1990 for Summer Youth Employment and Training funded under title II–B of the Act.

FOR FURTHER INFORMATION CONTACT: Mr. Carmelo J. Milici, phone: (202) 535–0507 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Pursuant to section 162 of the Job Training and Partnership Act (JTPA), the Employment and Training Administration (ETA) of the Department of Labor (DOL) publishes the final allocations, allocation formulas and the rationales for those formulas for Native American grantees to be funded under JTPA, title IV–A, and JTPA title II–B. The total amounts to be allocated are $58,193,000 for the Program Year 1990 JTPA, title IV–A, section 401 regular program, and $12,901,614 for the JTPA title II–B Summer Youth Employment and Training Program (SYETP) for the summer Calendar Year 1990.

This information, along with individual grantee planning estimates, was published in the **Federal Register**, Vol. 55, No. 37, page 6548 as a proposal.

Written comments were invited from the public. No comments were received on or before the deadline of March 26,

1990. The allocations set forth in this notice remain unchanged from the allocations announced in the notice of proposed allocations.

The formula for JTPA, title IV–A, section 401 provides that 25 percent of the funding be based on the number of unemployed Native Americans in the grantee's area, and 75 percent will be based on the number of poverty-level Native Americans in the grantee's area.

The formula for allocating the JTPA, title II–B, SYETP funds divides the funds among eligible recipients based on the proportion that the number of Native American youths in a recipient's area bears to the total number of Native American youths in all eligible recipients' areas.

The rationale for the above formula is that the number of poverty-level persons, unemployed persons and youth among the Native American population is indicative of the need for training and employment funds.

Statistics on poverty-level persons, unemployed persons and youth among Native Americans used in the above programs are derived from the Decennial Census of the Population, 1980.

Signed at Washington, DC this 8th day of May 1990.

Roberts T. Jones,

Assistant Secretary of Labor.

BILLING CODE 4510-30-M

U.S. DEPARTMENT OF LABOR - EMPLOYMENT AND TRAINING ADMINISTRATION PAGE 1
PY 1990 TITLE IV-A AND PY 1989 II-B (SUMMER 1990) FINAL ALLOCATIONS FOR NATIVE AMERICAN GRANTEES
04-16-1990

	PY 1990 IV-A			PY 1989 II-B		
	TOTAL	PROGRAM	COST POOL	TOTAL	PROGRAM	COST POOL
POARCH BAND OF CREEK INDIANS ROUTE 3, BOX 243A ATMORE, ALABAMA 36502 GRANT NUMBER:99-7-0648-55-104-02	379,219	303,375	75,844	2,341	1,873	468
ALEUTIAN/PRIBILOF ISLANDS ASSOC. INC. 401 EAST FIREWEED LANE, SUITE 201 ANCHORAGE, ALASKA 99503-2111 GRANT NUMBER:99-7-0117-55-071-02	45,229	36,183	9,046	34,548	27,638	6,910
ASSOC. OF VILLAGE COUNCIL PRESIDENTS P.O. BOX 848 BETHEL, ALASKA 99559 GRANT NUMBER:99-7-2713-55-135-02	537,621	430,097	107,524	259,626	207,701	51,925
BRISTOL BAY NATIVE ASSOCIATION P.O. BOX 310 DILLINGHAM, ALASKA 99576 GRANT NUMBER:99-7-0116-55-070-02	133,271	106,617	26,654	78,833	63,066	15,767
CENTRAL COUNCIL OF TLINGIT AND HAIDA INDIAN TR 320 W. WILLOUGHBY, SUITE 300 JUNEAU, ALASKA 99801 GRANT NUMBER:99-7-0114-55-068-02	208,107	166,486	41,621	167,404	133,923	33,481
COOK INLET TRIBAL COUNCIL 670 WEST FIREWEED LANE ANCHORAGE, ALASKA 99503 GRANT NUMBER:99-7-3402-55-188-02	345,359	276,287	69,072	199,705	159,764	39,941
KAWERAK INCORPORATED P.O. BOX 948 NOME, ALASKA 99762 GRANT NUMBER:99-7-0123-55-073-02	209,987	167,990	41,997	91,754	73,403	18,351
KENAITZE INDIAN TRIBE P. O. BOX 988 KENAI, ALASKA 99611 GRANT NUMBER:99-7-0089-55-067-02	28,648	22,918	5,730	17,414	13,931	3,483
KODIAK AREA NATIVE ASSOCIATION 402 CENTER AVENUE KODIAK, ALASKA 99615 GRANT NUMBER:99-7-0115-55-069-02	60,719	48,575	12,144	33,331	26,665	6,666
MANILAQ MANPOWER P.O. BOX 725 KOTZEBUE, ALASKA 99752 GRANT NUMBER:99-7-0124-55-074-02	164,779	131,823	32,956	88,383	70,706	17,677
METLAKATLA INDIAN COMMUNITY P.O. BOX 8 METLAKATLA, ALASKA 99926 GRANT NUMBER:99-7-0064-55-053-02	14,950	11,960	2,990	18,164	14,531	3,633

U.S. DEPARTMENT OF LABOR - EMPLOYMENT AND TRAINING ADMINISTRATION PAGE 2
PY 1990 TITLE IV-A AND PY 1989 II-B (SUMMER 1990) FINAL ALLOCATIONS FOR NATIVE AMERICAN GRANTEES
04-16-1990

	PY 1990 IV-A			PY 1989 II-B		
	TOTAL	PROGRAM	COST POOL	TOTAL	PROGRAM	COST POOL
NORTH PACIFIC RIM 3300 C STREET ANCHORAGE, ALASKA 99503 GRANT NUMBER:99-7-0118-55-072-02	54,839	43,871	10,968	26,028	20,822	5,206
TANANA CHIEFS CONFERENCE, INC. 201 FIRST AVENUE - DOYON BLDG. FAIRBANKS, ALASKA 99701 GRANT NUMBER:99-7-3109-55-150-02	366,364	293,091	73,273	214,779	171,823	42,956
AFFILIATION OF ARIZONA IND. CNTRS. INC. 333 WEST INDIAN SCHOOL ROAD, SUITE 210 PHOENIX, ARIZONA 85013 GRANT NUMBER:99-7-0268-55-089-02	242,336	193,869	48,467	0	0	0
AMERICAN INDIAN ASSOC. OF TUCSON P.O. BOX 7246 TUCSON, ARIZONA 85725 GRANT NUMBER:99-7-0492-55-096-02	316,222	252,978	63,244	0	0	0
COLORADO RIVER INDIAN TRIBES ROUTE 1, BOX 23-B PARKER, ARIZONA 85344 GRANT NUMBER:99-7-0498-55-097-02	77,447	61,958	15,489	31,084	24,867	6,217
GILA RIVER INDIAN COMMUNITY BOX 97 SACATON, ARIZONA 85247 GRANT NUMBER:99-7-0054-55-049-02	463,079	370,463	92,616	133,886	107,109	26,777
HOPI TRIBAL COUNCIL BOX 123 KYKOTSMOVI, ARIZONA 86039 GRANT NUMBER:99-7-0057-55-050-02	362,876	290,301	72,575	106,547	85,238	21,309
INDIAN DEV. DIST. OF ARIZONA, INC. 4560 NORTH 19th AVE., SUITE 200 PHOENIX, ARIZONA 85015 GRANT NUMBER:99-7-0053-55-048-02	105,827	84,662	21,165	43,443	34,754	8,689
NATIVE AMERICANS FOR COMMUNITY ACTION 2717 NORTH STEVES BOULEVARD SUITE 11 FLAGSTAFF, ARIZONA 86004 GRANT NUMBER:99-7-1777-55-119-02	107,868	86,294	21,574	0	0	0
NAVAJO TRIBE OF INDIANS P.O. BOX 1889 WINDOW ROCK,ARIZONA 86515 GRANT NUMBER:99-7-0059-55-052-02	6,431,281	5,145,025	1,286,256	2,349,459	1,879,567	469,892
PASQUA YAQUI TRIBE 7474 S. CAMINO DE OESTE TUCSON, ARIZONA 85746 GRANT NUMBER:99-7-3289-55-160-02	36,360	29,088	7,272	9,269	7,415	1,854

U.S. DEPARTMENT OF LABOR - EMPLOYMENT AND TRAINING ADMINISTRATION PAGE 3
PY 1990 TITLE IV-A AND PY 1989 II-B (SUMMER 1990) FINAL ALLOCATIONS FOR NATIVE AMERICAN GRANTEES
04-16-1990

	PY 1990 IV-A			PY 1989 II-B		
	TOTAL	PROGRAM	COST POOL	TOTAL	PROGRAM	COST POOL
PHOENIX INDIAN CENTER, INC. 333 WEST INDIAN SCHOOL ROAD, SUITE 200 PHOENIX, ARIZONA 85013 GRANT NUMBER:99-7-0195-55-084-02	665,340	532,272	133,068	0	0	0
SALT RIVER PIMA-MARICOPA IND. COMMUN. ROUTE 1, BOX 216 SCOTTSDALE, ARIZONA 85256 GRANT NUMBER:99-7-0476-55-094-02	90,533	72,426	18,107	46,532	37,226	9,306
SAN CARLOS APACHE TRIBE P.O. BOX'O' SAN CARLOS, ARIZONA 85550 GRANT NUMBER:99-7-0173-55-081-02	295,356	236,285	59,071	117,127	93,702	23,425
TOHONO O'ODHAM NATION P.O. BOX 837 SELLS, ARIZONA 85634 GRANT NUMBER:99-7-0181-55-083-02	403,642	322,914	80,728	126,676	101,341	25,335
WHITE MOUNTAIN APACHE TRIBE P.O. BOX 700 WHITE RIVER, ARIZONA 85941 GRANT NUMBER:99-7-0174-55-186-02	313,695	250,956	62,739	131,358	105,086	26,272
AM. INDIAN CENTER OF ARKANSAS, INC. 2 VAN CIRCLE, SUITE 7 LITTLE ROCK, ARKANSAS 72207 GRANT NUMBER:99-7-1778-55-120-02	439,388	351,510	87,878	0	0	0
CALIFORNIA INDIAN MANPOWER CSRT. 4153 NORTHGATE BOULEVARD SACRAMENTO, CALIFORNIA 95834 GRANT NUMBER:99-7-2058-55-181-02	2,869,188	2,295,350	573,838	152,798	122,238	30,560
CANDELARIA AMERICAN INDIAN COUNCIL 2635 WAGON WHEEL ROAD OXNARD, CALIFORNIA 93030 GRANT NUMBER:99-7-0086-55-066-02	434,863	347,890	86,973	0	0	0
HOOPA VALLEY BUSINESS COUNCIL P.O. BOX 815 HOOPA, CALIFORNIA 95546-0815 GRANT NUMBER:99-7-1142-55-114-02	48,850	39,080	9,770	22,564	18,051	4,513
INDIAN CENTER OF SAN JOSE, INC. 935 THE ALAMEDA SAN JOSE, CALIFORNIA 95126 GRANT NUMBER:99-7-0499-55-098-02	223,215	178,572	44,643	0	0	0
INDIAN HUMAN RESOURCES CENTER 4040 30TH STREEET SUITE A SAN DIEGO, CALIFORNIA 92104 GRANT NUMBER:99-7-2441-55-134-02	425,720	340,576	85,144	0	0	0

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	PY 1990 IV-A			PY 1989 II-B		
	TOTAL	PROGRAM	COST POOL	TOTAL	PROGRAM	COST POOL
NORTHERN CALIF. IND. DEV. COUNCIL, INC. 241 F STREET EUREKA, CALIFORNIA 95501 GRANT NUMBER:99-7-0686-55-015-02	306,644	245,315	61,329	15,355	12,284	3,071
SOUTHERN CALIFORNIA INDIAN CENTER, INC. 12755 BROOKHURST STREET, P.O. BOX 2550 GARDEN GROVE, CALIFORNIA 92642-2550 GRANT NUMBER:99-7-0170-55-172-02	1,879,959	1,503,967	375,992	0	0	0
TULE RIVER TRIBE DEPT. OF HEALTH, SAFETY & WELFARE P.O. BOX 589 PORTERVILLE, CALIFORNIA 93258 GRANT NUMBER:99-7-3219-55-153-02	126,128	100,902	25,226	4,213	3,370	843
UNITED INDIAN NATIONS 1404 FRANKLIN STREET, SUITE 202 OAKLAND, CALIFORNIA 94612 GRANT NUMBER:99-7-2310-55-133-02	606,199	484,959	121,240	0	0	0
YA-KA-AMA INDIAN EDUC. AND DEV., INC. 6215 EASTSIDE ROAD FORESTVILLE, CALIFORNIA 95436 GRANT NUMBER:99-7-0082-55-065-02	124,861	99,889	24,972	0	0	0
DENVER INDIAN CENTER, INC. 4407 MORRISON ROAD DENVER, COLORADO 80219 GRANT NUMBER:99-7-0076-55-062-02	582,318	465,854	116,464	0	0	0
SOUTHERN UTE INDIAN TRIBE P.O. BOX 800 IGNACIO, COLORADO 81137 GRANT NUMBER:99-7-2714-55-136-02	53,871	43,097	10,774	15,261	12,209	3,052
UTE MOUNTAIN UTE TRIBE P.O. BOX 36 TOWAOC, COLORADO 81334 GRANT NUMBER:99-7-1143-55-115-02	64,954	51,963	12,991	18,444	14,755	3,689
AMERICAN INDIANS FOR DEVELOPMENT, INC. P.O. BOX 117 MERIDEN, CONNECTICUT 06450 GRANT NUMBER:99-7-0361-55-091-02	181,358	145,086	36,272	0	0	0
NANTICOKE INDIAN ASSOCIATION, INC. RT. 4, BOX 107A MILLSBORO, DELAWARE 19966 GRANT NUMBER:99-9-3518-55-019-02	37,457	29,966	7,491	0	0	0
FLA. GOVERNORS COUNCIL ON IND. AFFAIRS 521 E. COLLEGE AVENUE TALLAHASSEE, FLORIDA 32301 GRANT NUMBER:99-7-0692-55-107-02	1,150,526	920,421	230,105	0	0	0

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	PY 1990 IV-A			PY 1989 II-B		
	TOTAL	PROGRAM	COST POOL	TOTAL	PROGRAM	COST POOL
MICCOSUKEE CORPORATION P.O. BOX 440021, TAMIAMI STATION MIAMI, FLORIDA 33144 GRANT NUMBER:99-7-0052-55-047-02	115,369	92,295	23,074	39,698	31,758	7,940
SEMINOLE TRIBE OF FLORIDA 6073 STIRLING ROAD HOLLYWOOD, FLORIDA 33024 GRANT NUMBER:99-7-0004-55-009-02	64,976	51,981	12,995	7,771	6,217	1,554
ALU LIKE, INC. 1024 MAPUNAPUNA STREET HONOLULU, HAWAII 96819-4417 GRANT NUMBER:99-7-1179-55-116-02	2,391,061	1,914,449	478,612	2,060,902	1,648,722	412,180
AMERICAN INDIAN SERVICES CORPORATION 1405 NORTH KING STREET, SUITE 302 HONOLULU, HAWAII 96817 GRANT NUMBER:99-7-3404-55-189-02	84,376	67,501	16,875	0	0	0
KOOTENAI TRIBE OF IDAHO P. O. BOX 1269 BONNERS FERRY, IDAHO 83805 GRANT NUMBER:99-7-3334-55-161-02	31,166	24,933	6,233	1,311	1,049	262
NEZ PERCE TRIBE P.O. BOX 365 LAPWAI, IDAHO 83540-0305 GRANT NUMBER:99-7-0065-55-054-02	77,960	62,368	15,592	12,265	9,812	2,453
SHOSHONE-BANNOCK TRIBES FORT HALL BUSINESS COUNCIL P.O. BOX 306 FORT HALL, IDAHO 83203 GRANT NUMBER:99-7-1780-55-121-02	231,489	185,191	46,298	39,791	31,833	7,958
AMERICAN INDIAN BUSINESS ASSOCIATION 4753 NORTH BROADWAY, SUITE 700 CHICAGO, ILLINOIS 60640 GRANT NUMBER:99-7-0809-55-109-02	1,049,140	839,312	209,828	0	0	0
MID AMERICA ALL INDIAN CENTER, INC. 660 N. SENECA WICHITA, KANSAS 67203 GRANT NUMBER:99-7-0168-55-078-02	156,433	125,146	31,287	0	0	0
UNITED TRIBES OF KANSAS AND S.E. NEB. P.O. BOX 29 HORTON, KANSAS 66439 GRANT NUMBER:99-7-0178-55-082-02	478,370	382,696	95,674	9,737	7,790	1,947
INTER-TRIBAL COUNCIL OF LOUISIANA, INC. 5425 GALERIA DRIVE - SUITE A BATON ROUGE, LOUISIANA 70816 GRANT NUMBER:99-7-0026-55-026-02	433,503	346,802	86,701	5,430	4,344	1,086

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	PY 1990 IV-A			PY 1989 II-B		
	TOTAL	PROGRAM	COST POOL	TOTAL	PROGRAM	COST POOL
CENTRAL MAINE INDIAN ASSOCIATION, INC. 157 ARK STREET, SUITE 3C, P.O. BOX 2280 BANGOR, MAINE 04401 GRANT NUMBER:99-7-2719-55-182-02	88,280	70,624	17,656	0	0	0
TRIBAL GOVERNORS, INC. 93 MAIN STREET ORONO, MAINE 04473 GRANT NUMBER:99-7-0001-55-167-02	101,554	81,243	20,311	27,245	21,796	5,449
BALTIMORE AMERICAN INDIAN CENTER 113 SO. BROADWAY BALTIMORE, MARYLAND 21231 GRANT NUMBER:99-7-3405-55-192-02	344,850	275,880	68,970	0	0	0
MASHPEE-WAMPANOAG INDIAN TRIBAL COUNCIL P.O. BOX 1048 MASHPEE, MASSACHUSETTS 02649 GRANT NUMBER:99-7-0408-55-093-02	80,146	64,117	16,029	0	0	0
GRAND RAPIDS INTER-TRIBAL COUNCIL 45 LEXINGTON AVE. N.W. GRAND RAPIDS, MICHIGAN 49504 GRANT NUMBER:99-7-0694-55-108-02	114,697	91,758	22,939	0	0	0
GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA IND ROUTE 1 BOX 135 SUTTONS BAY, MICHIGAN 49682 GRANT NUMBER:99-7-2721-55-137-02	53,138	42,510	10,628	2,434	1,947	487
INTER-TRIBAL COUNCIL OF MICHIGAN, INC. 405 EAST EASTERDAY AVENUE SAULT STE. MARIE, MICHIGAN 49783 GRANT NUMBER:99-7-0172-55-080-02	63,657	50,926	12,731	30,241	24,193	6,048
MICHIGAN INDIAN EMPLOYMENT AND TRAINING SERVIC 2450 DELPHI COMMERCE DRIVE SUITE 5 HOLT, MICHIGAN 48842 GRANT NUMBER:99-7-1144-55-179-02	767,046	613,637	153,409	0	0	0
NORTH AMERICAN INDIAN ASSOC. OF DETROIT 22720 PLYMOUTH ROAD DETROIT, MICHIGAN 48239 GRANT NUMBER:99-7-0695-55-176-02	386,460	309,168	77,292	0	0	0
POTAWATOMI INDIAN NATION 53237 TOWNHALL ROAD DOWAGIAC, MICHIGAN 49047 GRANT NUMBER:99-7-3339-55-164-02	146,801	117,441	29,360	0	0	0
SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS 2151 SHUNK ROAD SAULT STE. MARIE, MICHIGAN 49783 GRANT NUMBER:99-7-0507-55-100-02	225,771	180,617	45,154	42,413	33,930	8,483

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	PY 1990 IV-A			PY 1989 II-B		
	TOTAL	PROGRAM	COST POOL	TOTAL	PROGRAM	COST POOL
SOUTHEASTERN MICHIGAN INDIANS, INC. 22620 RYAN ROAD, P.O. BOX 861 WARREN, MICHIGAN 48090 GRANT NUMBER:99-7-3220-55-154-02	62,214	49,771	12,443	0	0	0
AMERICAN INDIAN FELLOWSHIP ASSN. 8 EAST FOURTH STREET DULUTH, MINNESOTA 55802 GRANT NUMBER:99-7-0254-55-087-02	131,135	104,908	26,227	2,060	1,648	412
AMERICAN INDIAN OPPORTUNITIES CTR. 1845 EAST FRANKLIN AVENUE MINNEAPOLIS, MINNESOTA 55404 GRANT NUMBER:99-7-3221-55-155-02	504,119	403,295	100,824	0	0	0
BOIS FORTE R. B. C. P.O. BOX 698 NETT LAKE, MINNESOTA 55772 GRANT NUMBER:99-7-0010-55-014-02	37,447	29,958	7,489	8,895	7,116	1,779
FOND DU LAC R.B.C. 105 UNIVERSITY ROAD CLOQUET, MINNESOTA 55720 GRANT NUMBER:99-7-0009-55-013-02	38,270	30,616	7,654	6,367	5,094	1,273
LEECH LAKE R. B. C. ROUTE 3, BOX 100 CASS LAKE, MINNESOTA 56633 GRANT NUMBER:99-7-0012-55-017-02	173,015	138,412	34,603	48,592	38,874	9,718
MILLE LACS BAND OF CHIPPEWA INDIANS STAR ROUTE-BOX 194 ONAMIA, MINNESOTA 56359 GRANT NUMBER:99-7-0008-55-012-02	31,584	25,267	6,317	8,801	7,041	1,760
MINNEAPOLIS AMERICAN INDIAN CENTER 1530 EAST FRANKLIN AVENUE MINNEAPOLIS, MINNESOTA 55404 GRANT NUMBER:99-7-0204-55-085-02	295,172	236,138	59,034	12,265	9,812	2,453
RED LAKE TRIBAL COUNCIL P.O. BOX 310 RED LAKE, MINNESOTA 56671 GRANT NUMBER:99-7-0017-55-020-02	138,537	110,830	27,707	62,636	50,109	12,527
WHITE EARTH R.B.C. BOX 418 WHITE EARTH, MINNESOTA 56591 GRANT NUMBER:99-7-0011-55-016-02	155,079	124,063	31,016	49,996	39,997	9,999
MISSISSIPPI BAND OF CHOCTAW INDIANS ROUTE 7, BOX 21 PHILADELPHIA, MISSISSIPPI 39350 GRANT NUMBER:99-7-0005-55-010-02	300,350	240,280	60,070	51,588	41,270	10,318

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PY 1990 TITLE IV-A AND PY 1989 II-B (SUMMER 1990) FINAL ALLOCATIONS FOR NATIVE AMERICAN GRANTEES
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	PY 1990 IV-A			PY 1989 II-B		
	TOTAL	PROGRAM	COST POOL	TOTAL	PROGRAM	COST POOL
REGION VII AMERICAN INDIAN COUNCIL, INC. 310 ARMOUR ROAD, SUITE 205 NORTH KANSAS CITY, MISSOURI 64116 GRANT NUMBER:99-7-0967-55-177-02	556,489	445,191	111,298	0	0	0
ASSINIBOINE AND SIOUX TRIBES FORT PECK INDIAN RESERVATION P.O. BOX 1027 POPLAR, MONTANA 59255 GRANT NUMBER:99-7-0033-55-031-02	207,225	165,780	41,445	76,212	60,970	15,242
BLACKFEET TRIBAL BUSINESS COUNCIL P.O.BOX 1090 BROWNING, MONTANA 59417 GRANT NUMBER:99-7-0006-55-011-02	240,379	192,303	48,076	91,567	73,254	18,313
CHIPPEWA CREE TRIBE ROCKY BOY ROUTE - P.O. BOX 578 BOX ELDER, MONTANA 59521 GRANT NUMBER:99-7-0035-55-033-02	96,730	77,384	19,346	29,492	23,594	5,898
CONFEDERATED SALISH & KOOTENAI TRIBES P.O. BOX 278 PABLO, MONTANA 59855 GRANT NUMBER:99-7-0031-55-030-02	243,205	194,564	48,641	71,905	57,524	14,381
CROW INDIAN TRIBE P.O. BOX 159 CROW AGENCY, MONTANA 59022 GRANT NUMBER:99-7-0030-55-029-02	204,263	163,410	40,853	80,425	64,340	16,085
FORT BELKNAP INDIAN COMMUNITY P. O. BOX 249 HARLEM, MONTANA 59526 GRANT NUMBER:99-7-0032-55-168-02	77,982	62,386	15,596	36,140	28,912	7,228
MONTANA UNITED INDIAN ASSOCIATION P.O. BOX 6043 HELENA, MONTANA 59604 GRANT NUMBER:99-7-0074-55-060-02	419,390	335,512	83,878	0	0	0
NORTHERN CHEYENNE TRIBE P.O. BOX 368 LAME DEER, MONTANA 59043 GRANT NUMBER:99-7-0034-55-060-02	161,862	129,490	32,372	53,929	43,143	10,786
INDIAN CENTER, INC. 1100 MILITARY ROAD LINCOLN, NEBRASKA 68508 GRANT NUMBER:99-7-2722-55-183-02	166,924	133,539	33,385	0	0	0
NEBRASKA INDIAN INTER-TRIBAL DEV. CORP. ROUTE 1 - BOX 66-A WINNEBAGO, NEBRASKA 68071 GRANT NUMBER:99-7-0087-55-171-02	302,751	242,201	60,550	54,397	43,518	10,879

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	PY 1990 IV-A			PY 1989 II-B		
	TOTAL	PROGRAM	COST POOL	TOTAL	PROGRAM	COST POOL
INTER-TRIBAL COUNCIL OF NEVADA P.O. BOX 7440 RENO, NEVADA 89510 GRANT NUMBER:99-7-0058-55-051-02	324,942	259,954	64,988	68,534	54,827	13,707
LAS VEGAS INDIAN CENTER, INC. 2300 WEST BONANZA ROAD LAS VEGAS, NEVADA 89106 GRANT NUMBER:99-7-0687-55-105-02	90,936	72,749	18,187	0	0	0
SHOSHONE PAIUTE TRIBES P.O. BOX 219 OWYHEE, NEVADA 89832 GRANT NUMBER:99-7-2723-55-138-02	160,122	128,098	32,024	19,100	15,280	3,820
POWHATAN RENAPE NATION RANCOKUS RESERVATION - P.O. BOX 225 RANCOKUS, NEW JERSEY 08073 GRANT NUMBER:99-7-3222-55-156-02	287,701	230,161	57,540	0	0	0
ALAMO NAVAJO SCHOOL BOARD P.O. BOX 907 MAGDALENA, NEW MEXICO 87825 GRANT NUMBER:99-7-2724-55-139-02	75,202	60,162	15,040	17,695	14,156	3,539
ALL INDIAN PUEBLO COUNCIL, INC. 3939 SAN PEDRO, NE P.O. BOX 3256 ALBUQUERQUE, NEW MEXICO 87190 GRANT NUMBER:99-7-3341-55-165-02	124,207	99,366	24,841	67,130	53,704	13,426
EIGHT NORTHERN INDIAN PUEBLO COUNCIL P.O. BOX 969 SAN JUAN PUEBLO, NEW MEXICO 87566 GRANT NUMBER:99-7-3223-55-157-02	77,411	61,929	15,482	39,604	31,683	7,921
FIVE SANDOVAL INDIAN PUEBLOS, INC. P.O. BOX 580 BERNALILLO, NEW MEXICO 87004 GRANT NUMBER:99-7-3336-55-162-02	116,584	93,267	23,317	67,785	54,228	13,557
JICARILLA APACHE TRIBE P.O. BOX 507 DULCE,NEW MEXICO 87528-0507 GRANT NUMBER:99-7-2725-55-140-02	52,451	41,961	10,490	30,990	24,792	6,198
MESCALERO APACHE TRIBE P.O. BOX 176 MESCALERO, NEW MEXICO 88340 GRANT NUMBER:99-7-3100-55-149-02	73,243	58,594	14,649	30,148	24,118	6,030
NATIONAL INDIAN YOUTH COUNCIL 318 ELM STREET SE ALBUQUERQUE, NEW MEXICO 87102 GRANT NUMBER:99-7-0077-55-063-02	696,027	556,822	139,205	0	0	0

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	PY 1990 IV-A			PY 1989 II-B		
	TOTAL	PROGRAM	COST POOL	TOTAL	PROGRAM	COST POOL
PUEBLO OF ACOMA P.O.BOX 469 PUEBLO OF ACOMA, NEW MEXICO 87034 GRANT NUMBER:99-7-2199-55-128-02	98,320	78,656	19,664	41,102	32,882	8,220
PUEBLO OF LAGUNA P.O. BOX 194 LAGUNA, NEW MEXICO 87026 GRANT NUMBER:99-7-1583-55-117-02	73,794	59,035	14,759	57,580	46,064	11,516
PUEBLO OF TAOS P.O. BOX 1846 TAOS, NEW MEXICO 87571 GRANT NUMBER:99-7-2200-55-129-02	31,648	25,318	6,330	12,546	10,037	2,509
PUEBLO OF ZUNI ZUNI TRIBAL COUNCIL P.O. BOX 339 ZUNI, NEW MEXICO 87327 GRANT NUMBER:99-7-0021-55-023-02	282,220	225,776	56,444	127,238	101,790	25,448
RAMAH NAVAJO SCHOOL BOARD, INC. DRAWER G PINE HILL, NEW MEXICO 87357 GRANT NUMBER:99-7-0146-55-075-02	90,114	72,091	18,023	23,219	18,575	4,644
SANTA CLARA INDIAN PUEBLO P.O. BOX 580 ESPANOLA, NEW MEXICO 87532 GRANT NUMBER:99-7-3224-55-158-02	18,867	15,094	3,773	5,618	4,494	1,124
SANTO DOMINGO TRIBE P.O. BOX 99 SANTO DOMINGO, NEW MEXICO 87052 GRANT NUMBER:99-7-1781-55-122-02	122,852	98,282	24,570	41,102	32,882	8,220
AMERICAN INDIAN COMMUNITY HOUSE, INC. 842 BROADWAY, 8TH FLOOR NEW YORK CITY, NEW YORK 10003-4889 GRANT NUMBER:99-7-0348-55-090-02	753,436	602,749	150,687	3,090	2,472	618
NATIVE AMERICAN CULTURAL CENTER, INC. 2115 EAST MAIN STREET ROCHESTER, NEW YORK 14609 GRANT NUMBER:99-7-3407-55-191-02	276,682	221,346	55,336	7,209	5,767	1,442
NATIVE AMERICAN MANPOWER PROGRAM, INC. 1047 GRANT STREET (REAR) - P.O. BOX 86 BUFFALO, NEW YORK 14207-0086 GRANT NUMBER:99-7-0689-55-106-02	224,390	179,512	44,878	10,112	8,090	2,022
ST. REGIS MOHAWK TRIBE COMMUNITY BUILDING HOGANSBURG, NEW YORK 13655 GRANT NUMBER:99-7-0522-55-103-02	160,059	128,047	32,012	27,433	21,946	5,487

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	PY 1990 IV-A			PY 1989 II-B		
	TOTAL	PROGRAM	COST POOL	TOTAL	PROGRAM	COST POOL
SENECA NATION OF INDIANS 1492 ROUTE 438 SALAMANCA, NEW YORK 14081 GRANT NUMBER:99-7-0169-55-079-02	297,635	238,108	59,527	54,022	43,218	10,804
CUMBERLAND COUNTY ASSOC. FOR IND. PEOPLE 102 INDIAN DRIVE FAYETTEVILLE, NORTH CAROLINA 28301 GRANT NUMBER:99-7-1782-55-123-02	121,817	97,454	24,363	0	0	0
EASTERN BAND OF CHEROKEE INDIANS P.O. BOX 481 CHEROKEE, NORTH CAROLINA 28719 GRANT NUMBER:99-7-0003-55-008-02	229,595	183,676	45,919	86,136	68,909	17,227
GUILFORD NATIVE AMERICAN ASSOC. P.O. BOX 5623 400 PRESCOTT STREET GREENSBORO, NORTH CAROLINA 27435-0623 GRANT NUMBER:99-7-2727-55-142-02	92,593	74,074	18,519	0	0	0
HALIWA-SAPONI TRIBE, INC. P. O. BOX 99 HOLLISTER, NORTH CAROLINA 27844 GRANT NUMBER:99-9-3514-55-015-02	64,534	51,627	12,907	0	0	0
LUMBEE REG. DEV. ASSOC. P.O. BOX 68 PEMBROKE, NORTH CAROLINA 28372-0068 GRANT NUMBER:99-7-0067-55-055-02	1,251,431	1,001,145	250,286	0	0	0
METROLINA NATIVE AMERICAN ASSN. 6407 IDLEWILD ROAD - SUITE 103 CHARLOTTE, NORTH CAROLINA 28212 GRANT NUMBER:99-7-2726-55-141-02	94,635	75,708	18,927	0	0	0
NORTH CAROLINA COMM. OF IND. AFFAIRS P.O. BOX 27228 RALEIGH, NORTH CAROLINA 27611-7228 GRANT NUMBER:99-7-0070-55-057-02	308,500	246,800	61,700	0	0	0
DEVILS LAKE SIOUX TRIBE P.O. BOX 300 FORT TOTTEN, NORTH DAKOTA 58335 GRANT NUMBER:99-7-0037-55-034-02	115,294	92,235	23,059	38,293	30,634	7,659
STANDING ROCK SIOUX TRIBE BOX D FORT YATES, NORTH DAKOTA 58538 GRANT NUMBER:99-7-0046-55-041-02	241,281	193,025	48,256	93,065	74,452	18,613
THREE AFFILIATED TRIBES BOX 597 NEW TOWN, NORTH DAKOTA 58763 GRANT NUMBER:99-7-0062-55-170-02	163,069	130,455	32,614	55,333	44,266	11,067

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PY 1990 TITLE IV-A AND PY 1989 II-B (SUMMER 1990) FINAL ALLOCATIONS FOR NATIVE AMERICAN GRANTEES
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	PY 1990 IV-A			PY 1989 II-B		
	TOTAL	PROGRAM	COST POOL	TOTAL	PROGRAM	COST POOL
TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS P.O. BOX 900 BELCOURT, NORTH DAKOTA 58316 GRANT NUMBER:99-7-0075-55-061-02	327,880	262,304	65,576	108,138	86,510	21,628
UNITED TRIBES TECH. COLLEGE 3315 UNIVERSITY DRIVE BISMARCK, NORTH DAKOTA 58511 GRANT NUMBER:99-7-0206-55-173-02	165,403	132,322	33,081	0	0	0
NORTH AMERICAN INDIAN CULTURAL CENTERS 1062 TRIPLETTE BOULEVARD AKRON, OHIO 44306 GRANT NUMBER:99-7-3349-55-166-02	699,633	559,706	139,927	0	0	0
CADDO TRIBE OF OKLAHOMA P.O. BOX 487 BINGER, OKLAHOMA 73009 GRANT NUMBER:99-7-1783-55-124-02	26,942	21,554	5,388	12,265	9,812	2,453
CENTRAL TRIBES OF THE SHAWNEE AREA, INC. 624 NORTH BROADWAY SHAWNEE, OKLAHOMA 74801 GRANT NUMBER:99-7-0038-55-035-02	78,054	62,443	15,611	48,873	39,098	9,775
CHEROKEE NATION OF OKLAHOMA P.O. BOX 948 TAHLEQUAH, OKLAHOMA 74465 GRANT NUMBER:99-7-0027-55-027-02	1,363,640	1,090,912	272,728	733,749	586,999	146,750
CHEYENNE-ARAPAHO TRIBES P.O. BOX 67 CONCHO, OKLAHOMA 73022 GRANT NUMBER:99-7-0048-55-043-02	204,604	163,683	40,921	104,581	83,665	20,916
CHICKASAW NATION OF OKLAHOMA 520 EAST ARLINGTON, P.O. BOX 1548 ADA, OKLAHOMA 74820 GRANT NUMBER:99-7-0042-55-038-02	365,600	292,480	73,120	187,721	150,177	37,544
CHOCTAW NATION OF OKLAHOMA DRAWER 1210 DURANT, OKLAHOMA 74702-1210 GRANT NUMBER:99-7-0041-55-037-02	744,566	595,653	148,913	329,752	263,802	65,950
CITIZENS BAND POTAWATOMI INDIANS 1901 SOUTH GORDON COOPER DRIVE SHAWNEE, OKLAHOMA 74801 GRANT NUMBER:99-7-2202-55-131-02	184,518	147,614	36,904	154,109	123,287	30,822
COMANCHE TRIBE OF OKLAHOMA P.O. BOX 908 LAWTON, OKLAHOMA 73502 GRANT NUMBER:99-7-3150-55-151-02	151,853	121,482	30,371	118,718	94,974	23,744

U.S. DEPARTMENT OF LABOR - EMPLOYMENT AND TRAINING ADMINISTRATION PAGE 13
PY 1990 TITLE IV-A AND PY 1989 II-B (SUMMER 1990) FINAL ALLOCATIONS FOR NATIVE AMERICAN GRANTEES
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	PY 1990 IV-A			PY 1989 II-B		
	TOTAL	PROGRAM	COST POOL	TOTAL	PROGRAM	COST POOL
CREEK NATION OF OKLAHOMA P.O. BOX 580 OKMULGEE, OKLAHOMA 74447 GRANT NUMBER:99-7-0025-55-025-02	554,837	443,870	110,967	354,656	283,725	70,931
FOUR TRIBES CONSORTIUM OF OKLAHOMA P.O. BOX 1193 ANADARKO, OKLAHOMA 73005 GRANT NUMBER:99-7-2728-55-143-02	69,603	55,682	13,921	36,795	29,436	7,359
INTER-TRIBAL COUNCIL OF N.E. OKLAHOMA P.O. BOX 1308 MIAMI, OKLAHOMA 74355 GRANT NUMBER:99-7-1135-55-110-02	48,642	38,914	9,728	35,765	28,612	7,153
KIOWA TRIBE OF OKLAHOMA P.O. BOX 361 CARNEGIE, OKLAHOMA 73015 GRANT NUMBER:99-7-0047-55-042-02	197,164	157,731	39,433	84,919	67,935	16,984
OKLAHOMA TRIBAL ASSISTANCE PROGRAM, INC. 1806 EAST 15th STREET, P.O. BOX 2841 TULSA, OKLAHOMA 74101 GRANT NUMBER:99-7-0072-55-058-02	321,887	257,510	64,377	194,836	155,869	38,967
OSAGE TRIBAL COUNCIL P.O. BOX 147 - OSAGE AGENCY CAMPUS PAWHUSKA, OKLAHOMA 74056 GRANT NUMBER:99-7-0022-55-024-02	98,273	78,618	19,655	76,118	60,894	15,224
OTOE-MISSOURIA INDIAN TRIBE OF OKLA. P.O. BOX 99 RED ROCK, OKLAHOMA 74651 GRANT NUMBER:99-7-2730-55-145-02	13,402	10,722	2,680	8,052	6,442	1,610
PAWNEE TRIBE OF OKLAHOMA P.O. BOX 470 PAWNEE, OKLAHOMA 74058 GRANT NUMBER:99-7-1785-55-126-02	22,186	17,749	4,437	16,197	12,958	3,239
PONCA TRIBE OF OKLAHOMA WHITE EAGLE - BOX 2 PONCA CITY, OKLAHOMA. 74601 GRANT NUMBER:99-7-0029-55-028-02	52,311	41,849	10,462	47,843	38,274	9,569
SEMINOLE NATION OF OKLAHOMA P.O. BOX 1498 WEWOKA, OKLAHOMA 74884 GRANT NUMBER:99-7-0051-55-046-02	140,044	112,035	28,009	66,662	53,330	13,332
TONKAWA TRIBE OF OKLAHOMA P.O. BOX 70 TONKAWA, OKLAHOMA 74653 GRANT NUMBER:99-7-1136-55-111-02	41,317	33,054	8,263	46,907	37,526	9,381

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PY 1990 TITLE IV-A AND PY 1989 II-B (SUMMER 1990) FINAL ALLOCATIONS FOR NATIVE AMERICAN GRANTEES
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	PY 1990 IV-A			PY 1989 II-B		
	TOTAL	PROGRAM	COST POOL	TOTAL	PROGRAM	COST POOL
UNITED URBAN INDIAN COUNCIL 1501 CLASSEN BLVD., SUITE 100 OKLAHOMA CITY, OKLAHOMA 73106-5435 GRANT NUMBER:99-7-2731-55-146-02	289,994	231,995	57,999	218,805	175,044	43,761
CONFED. TRIBES OF SILETZ INDIANS P.O. BOX 549 SILETZ, OREGON 97380 GRANT NUMBER:99-7-3153-55-152-02	577,927	462,342	115,585	13,763	11,010	2,753
CONFED. TRIBES OF THE UMATILLA IND. RES. P.O. BOX 638 PENDLETON, OREGON 97801 GRANT NUMBER:99-7-3065-55-148-02	42,875	34,300	8,575	16,291	13,033	3,258
CONFEDERATE TRIBES OF WARM SPRINGS P.O. BOX C - TENINO ROAD WARM SPRINGS, OREGON 97761 GRANT NUMBER:99-7-0256-55-088-02	90,479	72,383	18,096	42,319	33,855	8,464
ORGANIZATION OF FORGOTTEN AMERICANS P.O. BOX 1257 4509 SOUTH 6TH STREET, RM. 206 KLAMATH FALLS, OREGON 97601-0276 GRANT NUMBER:99-7-2732-55-147-02	420,816	336,653	84,163	4,120	3,296	824
COUNCIL OF THREE RIVERS 200 CHARLES STREET PITTSBURGH, PENNSYLVANIA 15238 GRANT NUMBER:99-7-0642-55-175-02	668,120	534,496	133,624	0	0	0
UNITED AM. INDIANS OF THE DEL. VALLEY 225 CHESTNUT STREET PHILADELPHIA, PENNSYLVANIA 19106 GRANT NUMBER:99-7-0477-55-095-02	191,009	152,807	38,202	0	0	0
RHODE ISLAND INDIAN COUNCIL 444 FRIENDSHIP ST. PROVIDENCE, RHODE ISLAND 02907 GRANT NUMBER:99-7-0510-55-101-02	369,281	295,425	73,856	0	0	0
CATAWBA INDIAN NATION P. O. BOX 957 ROCK HILL, SOUTH CAROLINA 29731 GRANT NUMBER:99-9-3516-55-017-02	256,140	204,112	51,028	11,422	9,138	2,284
CHEYENNE RIVER SIOUX TRIBE P.O. BOX 768 EAGLE BUTTE, SOUTH DAKOTA 57625 GRANT NUMBER:99-7-0039-55-036-02	218,294	174,635	43,659	82,298	65,838	16,460
LOWER BRULE SIOUX TRIBE P.O. BOX 187 LOWER BRULE, SOUTH DAKOTA 57548 GRANT NUMBER:99-7-0073-55-059-02	55,321	44,257	11,064	14,418	11,534	2,884

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PY 1990 TITLE IV-A AND PY 1989 II-B (SUMMER 1990) FINAL ALLOCATIONS FOR NATIVE AMERICAN GRANTEES
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	PY 1990 IV-A			PY 1989 II-B		
	TOTAL	PROGRAM	COST POOL	TOTAL	PROGRAM	COST POOL
OGLALA SIOUX TRIBE P.O. BOX 6 PINE RIDGE, SOUTH DAKOTA 57770 GRANT NUMBER:99-7-0043-55-039-02	688,916	551,133	137,783	226,108	180,886	45,222
ROSEBUD SIOUX TRIBE BOX 430 ROSEBUD, SOUTH DAKOTA 57570 GRANT NUMBER:99-7-0044-55-040-02	408,067	326,454	81,613	114,973	91,978	22,995
SISSETON-WAHPETON SIOUX TRIBE P.O. BOX 509 AGENCY VILLAGE, SOUTH DAKOTA 57262 GRANT NUMBER:99-7-0045-55-169-02	158,934	127,147	31,787	48,686	38,949	9,737
UNITED SIOUX TRIBES DEV. CORP. P.O. BOX 1193 PIERRE, SOUTH DAKOTA 57501 GRANT NUMBER:99-7-0165-55-077-02	675,097	540,078	135,019	63,479	50,783	12,696
NATIVE AMERICAN INDIAN ASSOCIATION 211 UNION STREET, SUITE 401 STAHLMAN BUILDING NASHVILLE, TENNESSEE 37501 GRANT NUMBER:99-9-3515-55-016-02	325,398	260,318	65,080	0	0	0
ALABAMA-COUSHATTA INDIAN TRIBAL COUNCIL ROUTE 3 - BOX 645 LIVINGSTON, TEXAS 77315 GRANT NUMBER:99-7-1784-55-125-02	632,488	505,990	126,498	5,337	4,270	1,067
DALLAS INTER-TRIBAL CENTER 209 EAST JEFFERSON BLVD. DALLAS, TEXAS 75203-2690 GRANT NUMBER:99-7-0078-55-064-02	259,568	207,654	51,914	0	0	0
TIGUA INDIAN TRIBE P.O. BOX 17579 - YSLETA STATION EL PASO, TEXAS 79917 GRANT NUMBER:99-7-2099-55-127-02	432,029	345,623	86,406	11,703	9,362	2,341
INDIAN CENTER EMPLOYMENT SERVICES, INC. 1865 SOUTH MAIN, SUITE I SALT LAKE CITY, UTAH 84115 GRANT NUMBER:99-9-3517-55-018-02	396,586	317,269	79,317	0	0	0
UTE INDIAN TRIBE P.O. BOX 190 FORT DUCHESNE, UTAH 84026 GRANT NUMBER:99-7-0049-55-044-02	71,275	57,020	14,255	35,297	28,238	7,059
ABENAKI SELF-HELP ASSN./N.H.IND. COUNC. BOX 276 SWANTON, VERMONT 05488 GRANT NUMBER:99-7-3064-55-185-02	105,611	84,489	21,122	0	0	0

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PY 1990 TITLE IV-A AND PY 1989 II-B (SUMMER 1990) FINAL ALLOCATIONS FOR NATIVE AMERICAN GRANTEES
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	PY 1990 IV-A			PY 1989 II-B		
	TOTAL	PROGRAM	COST POOL	TOTAL	PROGRAM	COST POOL
MATTAPONI PAMUNKEY MONACAN CONSORTIUM ROUTE 2 - P.O. BOX 280 WEST POINT, VIRGINIA 23181 GRANT NUMBER:99-7-3227-55-159-02	229,204	183,363	45,841	1,592	1,274	318
AMERICAN INDIAN COMMUNITY CENTER EAST 801 SECOND AVE. SPOKANE, WASHINGTON 99202 GRANT NUMBER:99-7-1138-55-112-02	681,468	545,174	136,294	118,250	94,600	23,650
COLVILLE CONFEDERATED TRIBES P.O. BOX 150 NESPELEM, WASHINGTON 99155 GRANT NUMBER:99-7-1726-55-118-02	193,320	154,656	38,664	50,090	40,072	10,018
LUMMI INDIAN BUSINESS COUNCIL 2616 KWINA ROAD BELLINGHAM, WASHINGTON 98225 GRANT NUMBER:99-7-2204-55-338-02	42,416	33,933	8,483	19,849	15,879	3,970
N.W. INTER-TRIBAL COUNCIL P.O. BOX 115 NEAH BAY, WASHINGTON 98357 GRANT NUMBER:99-7-0069-55-056-02	44,013	35,210	8,803	32,769	26,215	6,554
PUYALLUP TRIBE 2002 EAST 28TH ST. TACOMA, WASHINGTON 98404 GRANT NUMBER:99-7-1137-55-178-02	156,077	124,862	31,215	19,942	15,954	3,988
SEATTLE INDIAN CENTER 611 12TH AVENUE SOUTH - SUITE 300 SEATTLE, WASHINGTON 98144 GRANT NUMBER:99-7-0511-55-102-02	408,871	327,097	81,774	0	0	0
WESTERN WASH. IND. EMPL. AND TRNG. PROG. 4505 PACIFIC HIGHWAY EAST SUITE C-5 TACOMA, WASHINGTON 98424 GRANT NUMBER:99-7-1933-55-180-02	822,502	658,002	164,500	130,796	104,637	26,159
LAC COURTE OREILLES TRIBAL GOVERNING BOARD ROUTE 2, BOX 2700 HAYWARD, WISCONSIN 54843 GRANT NUMBER:99-7-0018-55-021-02	92,657	74,126	18,531	25,560	20,448	5,112
LAC DU FLAMBEAU BAND OF LAKE SUPERIOR CHIPPEWA P.O. BOX 67 LAC DU FLAMBEAU, WISCONSIN 54538 GRANT NUMBER:99-7-1139-55-113-02	44,611	35,689	8,922	19,662	15,730	3,932
MENOMINEE INDIAN TRIBE P.O. BOX 397 KESHENA, WISCONSIN 54135-0397 GRANT NUMBER:99-7-0013-55-018-02	70,770	56,616	14,154	47,937	38,350	9,587

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PY 1990 TITLE IV-A AND PY 1989 II-B (SUMMER 1990) FINAL ALLOCATIONS FOR NATIVE AMERICAN GRANTEES
04-16-1990

	PY 1990 IV-A			PY 1989 II-B		
	TOTAL	PROGRAM	COST POOL	TOTAL	PROGRAM	COST POOL
MILWAUKEE AREA AM. IND. MANPOWER COUNC. 634 WEST MITCHELL STREET MILWAUKEE, WISCONSIN 53204-3512 GRANT NUMBER:99-7-0227-55-086-02	219,381	175,505	43,876	0	0	0
ONEIDA TRIBE OF INDIANS OF WIS.. INC. P.O. BOX 365 ONEIDA, WISCONSIN 54115-0365 GRANT NUMBER:99-7-0015-55-019-02	194,482	155,586	38,896	31,739	25,391	6,348
STOCKBRIDGE-MUNSEE COMMUNITY ROUTE 1 BOWLER, WISCONSIN 54416 GRANT NUMBER:99-7-0500-55-099-02	59,110	47,288	11,822	9,456	7,565	1,891
WISCONSIN INDIAN CONSORTIUM P.O. BOX 181 ODANAH, WISCONSIN 54861 GRANT NUMBER:99-7-2207-55-132-02	86,895	69,516	17,379	26,684	21,347	5,337
WISCONSIN-WINNEBAGO BUSINESS COMMITTEE P.O. BOX 311 TOMAH, WISCONSIN 54660 GRANT NUMBER:99-7-0019-55-022-02	188,665	150,932	37,733	15,167	12,134	3,033
SHOSHONE/ARAPAHOE TRIBES P.O. BOX 217 FORT WASHAKIE, WYOMING 82514 GRANT NUMBER:99-7-0050-55-045-02	212,564	170,051	42,513	71,531	57,225	14,306
NATIONAL TOTAL	58,193,000	46,554,403	11,638,597	12,901,614	10,321,291	2,580,323

[FR Doc. 90-14531 Filed 6-21-90; 8:45 am]
BILLING CODE 4510-30-C

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice General Wage Determinations No. TX90-31 and TX90-35 dated January 5, 1990. See Wage Decision No TX90-47 for all areas formerly covered by these decisions, except Lampasas County, which is covered by Wage Decision No. TX90-27.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut:
CT90-1 (Jan. 5, 1990) ..... p. 63, pp. 65.
Pennsylvania:
PA90-14 (Jan. 5, 1990) ..... p. 1019, p. 1020.

Volume II

Iowa:
IA90-3 (Jan. 5, 1990) ..... p. 29, p. 30.
IA90-4 (Jan. 5, 1990) ..... p. 33, p. 34.
IA90-5 (Jan. 5, 1990) ..... p. 37, pp. 38-41.
IA90-6 (Jan. 5, 1990) ..... p. 47, p. 48.
Minnesota:
MN90-7 (Jan. 5, 1990) ..... p. 563, pp. 564-571, 573.
MN90-8 (Jan. 5, 1990) ..... p. 583, pp. 584-590, pp. 597-598.
MN90-15 (Jan. 5, 1990) ..... p. 613, pp. 614-616.
Missouri:
MO90-1 (Jan. 5, 1990) ..... p. 627, pp. 628-629, pp. 631-634.
MO90-3 (Jan. 5, 1990) ..... p. 659, p. 660.
MO90-10 (Jan. 5, 1990) ..... p. 703, p. 704.
Nebraska:
NE90-1 (Jan. 5, 1990) ..... p. 717.
New Mexico:
NM90-1 (Jan. 5, 1990) ..... p. 747, p. 748.
Texas:
TX90-3 (Jan. 5, 1990) ..... p. 987, p. 988.
TX90-8 (Jan. 5, 1990) ..... p. 1007, p. 1008.
TX90-18 (Jan. 5, 1990) ..... p. 1029, p. 1030.
TX90-27 (Jan. 5, 1990) ..... p. 1049, pp. 1050-1051.
TX90-28 (Jan. 5, 1990) ..... p. 1053, pp. 1054-1055.
TX90-29 (Jan. 5, 1990) ..... p. 1057, pp. 1058-1059.
TX90-30 (Jan. 5, 1990) ..... p. 1061, pp. 1062-1063.
TX90-38 (Jan. 5, 1990) ..... p. 1087, pp. 1088-1089.
TX90-43 (Jan. 5, 1990) ..... p. 1107, pp. 1108-1109.
TX90-45 (Jan. 5, 1990) ..... p. 1115, pp. 1116-1117.
TX90-47 (Jan. 5, 1990) ..... p. 1123, pp. 1124-1125.
TX90-48 (Jan. 5, 1990) ..... p. 1127, pp. 1128-1129.
TX90-49 (Jan. 5, 1990) ..... p. 1131, pp. 1132-1133.
TX90-54 (Jan. 5, 1990) ..... p. 1145, pp. 1146-1146b.

Volume III

California:
CA90-2 (Jan. 5, 1990) ..... p. 41, pp. 46-49, 54.
Colorado:
CO90-4 (Jan. 5, 1990) ..... p. 125, p. 127.
North Dakota:
ND90-2 (Jan. 5, 1990) ..... p. 229, p. 230.
Nevada:
NV90-5 (Jan. 5, 1990) ..... p. 289, pp. 290-308f.
Wyoming:
WY90-4 (Jan. 5, 1990) ..... p. 453, p. 454.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office

(GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents
U.S. Government Printing Office
Washington, DC 20402
(202) 783-3238

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC This 15th Day of June 1990.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 90-14327 Filed 6-21-90; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL SCIENCE FOUNDATION

Meeting; Materials Research Advisory Committee

Name: Materials Research Advisory Committee.

Place: Room 540, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Date: July 9, 1990.

Time: 9 a.m.–5 p.m.

Type of Meeting: Closed.

Contact Person: Dr. William A. Sibley, Acting Division Director, Division of Materials Research, Room 408, National Science Foundation, Washington, DC 20550, Telephone: (202) 357-9794.

Purpose of Meeting: To provide advice and recommendations concerning the establishment of a new National High Magnetic Field Laboratory.

Agenda: Review and evaluation of National High Magnetic Field Laboratory proposals as part of the selection of an award.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: June 18, 1990.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90-14440 Filed 6-21-90; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-219]

GPU Nuclear Corp. and Jersey Central Power & Light Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of section III.G of appendix R to 10 CFR part 50 to GPU Nuclear Corporation, et al. (the licensee) for the Oyster Creek Nuclear Generating Station, located at the licensee's site in Ocean County, New Jersey.

Environmental Assessment

Identification of the Proposed Action

The licensee is requesting exemptions from certain technical requirements of section III.G of 10 CFR part 50 appendix R "Fire Protection of Safe Shutdown Capability." The licensee's request and bases for exemptions are contained in a letter dated August 25, 1986.

The Need for the Proposed Action

The exemptions are needed because additional modifications to achieve strict compliance with the regulations represents an unwarranted burden on the licensee since the cost associated with those modifications are significantly in excess of those required to meet the underlying purpose of the rule. These costs consist of engineering and construction resources and associated capital costs related to the following:

(1) Relocation of piping and valves which would complicate plant operations and decrease operator efficiency.

(2) Reconfiguration of electrical systems and complex rerouting of high power electrical cabling and associated circuits.

(3) Installation of new power panels and interconnection with existing systems.

(4) Rerouting of many large cables and cable trays to make room for fire barriers which are not necessary to assure safe shutdown when considering the existing protection in relation to the hazard.

(5) Additional congestion of plant areas which would complicate plant operations and future modifications.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed exemptions from certain technical requirements of section III.G of appendix R to 10 CFR part 50 for specific areas of the plant.

Based on its review, the Commission agrees with GPUN and in each case we have concluded that the requested exemption is valid and should be granted. Therefore, the proposed exemption does not increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational exposure. Accordingly, the Commission concludes that this proposed exemption would result in no significant radiological environmental impact.

With regard to nonradiological impacts, the proposed exemptions from the requirements of section III.G of appendix R to 10 CFR part 50 involves various buildings in the reactor plant which are located within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed exemptions; any alternatives to the exemptions will have either no environmental impact or great environmental impact.

Alternative Use of Resources

This action does not involve the use of resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request that supports the proposed exemption. The staff did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the

human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this proposed action, see the licensee's letter dated August 25, 1986. Copies of the request for exemption are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Dated at Rockville, Maryland, this 14th day of June, 1990.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulatory.

[FR Doc. 90–14477 Filed 6–21–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–322]

Long Island Lighting Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption to the requirement to perform periodic containment leak rate testing as prescribed in 10 CFR 50.54(o) and appendix J to 10 CFR part 50. This exemption would be granted to the Long Island Lighting Company (LILCO), the licensee for the Shoreham Nuclear Power Station (SNPS), located in Suffolk County, New York.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the requirements of 10 CFR part 50, appendix J sections III.D.1, D.2, and D.3 to perform periodic containment leak rate testing, as requested by the licensee in its letter dated December 8, 1989. This exemption is the proposed action being considered by the Commission.

The Need for the Proposed Action

The licensee's letter of December 8, 1989 provided the following justification for an exemption from the requirements of appendix J to 10 CFR part 50 to perform periodic leak rate testing of the containment. Continuing to conduct unnecessary appendix J containment leak rate testing would result in undue hardship and costs that are not necessary for public safety. The request for an exemption from appendix J containment leak rate testing represents an appropriate ordering of priorities and a prudent allocation of resources.

Environmental Impact of the Proposed Action

The proposed exemption does not affect the manner of current facility operation, or the risk of facility accidents. (Shoreham is currently shutdown and defueled, and the reactor vessel internals are being removed.) The possibility of environmental impact from this exemption is extremely remote. The subject containment leak rate tests are conducted during shutdown periods prior to resumption of power operations, usually following refueling. LILCO is prevented, by agreement with the State of New York, from operating Shoreham. However, should conditions change, the staff requires that containment barriers be tested and demonstrated operable prior to refueling the reactor.

The proposed exemption would not authorize construction or operation, would not authorize a change in licensed activities, nor affect changes in the permitted types or amounts of radiological effluents. Post-accident radiological releases will not differ from those determined previously, and the proposed exemption does not otherwise affect facility radiological effluents or occupational exposures. With regard to potential non-radiological impacts, the proposed exemption does not affect plant non-radiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since the Commission concluded that there is no measurable environmental impacts associated with the proposed exemption, alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative to the exemption would be to require the licensee to continue conducting containment leak rate tests. Such actions would not enhance the protection of the environment or the public health and safety.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Shoreham Nuclear Power Station.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based on the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption, dated December 8, 1989, and the NRC staff's letter dated March 16, 1990, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Shoreham-Wading River Public Library, Route 25A, Shoreham, New York 11786.

Dated at Rockville, Maryland, this 18th day of June 1990.

For the Nuclear Regulatory Commission.

James C. Stone,

Acting Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90–14478 Filed 6–21–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 30–05004

Issuance of Environmental Assessment of Proposed Final Decommissioning of the Fuel Handling Building and Reactor Building at the Pathfinder Generating Plant and Finding of No Significant Impact; Northern States Power Co.

The U.S. Nuclear Regulatory Commission (the Commission) has issued an Environmental Assessment and a Finding of No Significant Impact related to an application dated July 18, 1989 by Northern States Power Company (the applicant) for a license amendment to authorize final decommissioning of the Fuel Handling Building (FHB) and Reactor Building (RB) at the Pathfinder Generating Plant, near Sioux Falls, SD.

Environmental Assessment

Proposed Action: The proposed action is the issuance of a license amendment authorizing the applicant to perform final decommissioning of the FHB and RB at its Pathfinder Generating Plant. Nuclear power generation ended at Pathfinder in September, 1967. Subsequently, all nuclear fuel was shipped offsite, nuclear facilities were partially decommissioned and the plant was repowered with steam supplied by boilers fired by oil or natural gas. Since completion of repowering and partial decommissioning in 1971, the lower

levels of the FHB and the RB have been maintained in protected isolation with controlled access allowed only for periodic inspection and radiation surveys.

The proposed action would restore the FHB and RB to a condition allowing unrestricted use by removal of contaminated equipment, materials, hardware and concrete. Decommissioning of the RB includes removal and transport of the reactor pressure vessel and reactor internal components by railroad to a low-level waste disposal site near Richland, WA. Following decontamination to unrestricted use conditions, the applicant would maintain and use the FHB for other purposes. The upper RB would be demolished and scrapped, and the concrete walls, floors, and foundation below grade would be buried in place. Underground cavities would be backfilled with clean material, and the surface area would be revegetated with grass.

Need for the Proposed Action: The proposed action is necessary to remove radiactive equipment, materials and concrete so that the FHB and RB need no longer be afforded protected isolation and the buildings and/or land can be returned to use for other purposes.

Environmental Impact of the Proposed Action: Expected radioactive releases to the air will be small, no more than about one millicurie, and will result in insignificant radiation doses to persons offsite. The highest dose would be via the external exposure pathway and would lead to a dose of about 0.02 millirem or less to the whole body. No liquid releases of radioactivity will be made.

Conservatively estimated projected total occupational exposures to workers (56 man-rem) will result in a potential chance of one induced cancer death of about 0.008, or about 8 chances in 1,000.

A worst-case plausible accident scenario for accidents onsite would result in no more than about 1.6 millirem to the lung of a person offsite. Exposures to onsite workers from potential accidents would be well within the occupational exposure limits for routine opeations prescribed in 10 CFR part 20.

Offsite transportation accidents would have low potential consequences and a very low probability of occurrence. The probability of one of the estimated 50 truck shipments of radioactive waste being involved in an accident and fire is estimated to be 0.0007, or about 7 chances in 10,000. The chance of an accident with fire for the railroad train transporting the reactor pressure vessel is about 0.00024, or less than 3 chances in 10,000. Even in the event of one of these low-probability accidents, resulting radiation doses would be well within 10 CFR part 20 limits for annual occupational exposure.

Nonradiological impacts of all kinds are negligible.

Conclusion: On the basis of the NRC staff's evaluation of the applicant's Environmental Report, and further analysis of the environmental impacts of the proposed action as set forth in the staff's Environmental Assessment, the staff concludes that the proposed action will not result in any significant environmental impact.

Alternatives to the Proposed Action: The Environmental Assessment considers the following alternatives: no action, delayed action, modified action. Modifications considered included: demolition and burial of the FHB, as is proposed for the RB; complete removal of the RB from the site, including all below-grade concrete walls and floors; entombment of the RB; and alternative waste transportation methods. The alternatives were generally more costly, had greater impacts and lacked significant benefits compared to the proposed action. Transportation of radioactive waste by railroad appeared favorable compared to truck transportation, as predicted occupational and population radiation exposures were both rduced. However, the resulting impacts from either transportation mode are small and uncertain.

Alternative Use of Resources: The proposed action would result in he irreversible use of energy resources in the conduct of decommissioning activities and the transportation of waste materials for disposal. A small amount of land at the low-level waste disposal site would be irreversibly committed for waste disposal. There are no reasonable alternatives to these resource uses, and the proposed action does not involve any unresolved conflicts concerning use of available resources.

Agencies and Persons Consulted, and Sources Used: The Environmental Assessment was prepared entirely by staff of the U.S. Nuclear Regulatory Commission. No other agencies or persons were consulted. No other sources were used beyond those identified as references in the staff's Environmental Assessment.

Finding of No Significant Impact: The Commission's staff has prepared an Environmental Assessment evaluating the environmental impacts related to the proposed licensing action. The Environmental Assessment has examined the radiological impacts associated with planned operations and potential accidents, both onsite and offsite, for both the general population and decommissioning and waste transportation workers. As the Environmental Assessment has not identified any significant environmental impact associated with the proposed licensing action, the Commission's staff has concluded that a Finding of No Significant Impact is justified and appropriate.

The Environmental Assessment is available for public inspection and copying at the Commission's Public Document room, located at 2120 L Street NW., Washington, DC. Single copies of the Environmental Assessment may be obtained by calling (301) 492–3435, or writing to the Chief, Regulatory Branch, Division of Low-Level Waste Management and Decommissioning, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Rockville, Maryland, this 15th day of June, 1990.

For the Nuclear Regulatory Commission.

John H. Austin,

Acting Chief, Regulatory Branch, Division of Low-Level Waste, Management and Decommissioning.

[FR Doc. 90–14475 Filed 6–21–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–280]

Virginia Electric and Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an exemption from the requirements of Appendix J to 10 CFR part 50 to Virginia Electric and Power Company (the licensee) for the Surry Power Station, Unit No. 1, located in Surry County, Virginia.

Environmental Assessment

Identification of Proposed Action

The proposed exemption would grant a one-time relief from the schedular requirements of 10 CFR part 50, appendix J, paragraph III.D.3 to perform a Type C test within a 2-year interval. In addition, related changes to the Technical Specifications would be made. The requested exemption would allow the licensee to defer the Type C testing until the next refueling outage scheduled for early October 1990, but no later than December 31, 1990.

The licensee's request for exemption and bases therefor are contained in a letter dated January 8, 1990, as clarified on March 20 and April 20, 1990.

The Need for the Proposed Action

The proposed exemption would allow a one-time relief from performing a Type C test currently required to be performed no later than June 23, 1990, and enable Surry Unit 1 to continue normal plant operation and therefore prevent the premature shutdown of the Surry Power Station, Unit 1.

The purpose of the Type C testing is to measure and ensure that the leakage through the primary reactor containment does not exceed the maximum allowable leakage rate. It also provides assurance that periodic surveillance, maintenance and repairs are made to systems or components penetrating the containment. During the last two Type C tests, the licensee took corrective actions for valve repair and valve replacement to reduce valve leakage. In addition, the licensee has provided projected valve leakage estimates which the NRC has reviewed. The staff finds that the methodology used for estimating the leakage for the extended period is acceptable.

Environment Impacts of the Proposed Action

The proposed exemption would allow a one-time relief from the schedular requirements to perform a Type C test within a 2-year period. The licensee has taken corrective action to repair valves and replaced certain valves during the last two Type C tests to minimize valve leakage. The proposed exemption will not negatively impact containment integrity and will not significantly change the risk from facility accidents. Therefore, post-accident radiological releases will not be significantly greater than previously determined, nor does the proposed exemption otherwise affect radiological plant effluents, or result in any significant occupational exposure. Likewise, the proposed exemption would not affect nonradiological plant effluents and would have no other environmental impacts. Therefore, the staff concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Because it has been concluded that there are no measurable impacts associated with the proposed exemption, any alternative to the exemption will have either no environmental impacts or greater environmental impacts.

The principal alternative would be to deny the requested exemption. Such action would not reduce environmental impacts of the Surry Unit 1 operations and would result in reduced operatioinal flexibility.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement for the Surrey Power Station, Unit 1.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The staff has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption from 10 CFR part 50, appendix J, dated January 8, 1990, as clarified on March 20 and April 20, 1990, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Rockville, Maryland, this 20th day of June 1990.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–2, Division of Reactor Projects–I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90–14618 Filed 6–21–90; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on July 12–14, 1990, in Room P–110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the **Federal Register** on May 22, 1990.

Thursday, July 12, 1990, Room P–110, 7920 Norfolk Avenue, Bethesda, Md.

8:30 a.m.–8:45 a.m.: Chairman's Remarks (Open)—The ACRS Chairman will briefly report regarding items of current interest.

8:45 a.m.–9:45a.m.: Systematic Assessment of Licensee Performance (Open)—Representatives of the NRC staff will breif the Committee and discuss proposed changes in the SALP process based on a survey of the regulatory impact on plant operations.

10 a.m.–12 Noon and 1 p.m.–2 p.m.: EPRI Requirements for Advanced Lighter-Water Reactors (Open)—The Committee will review and report on the NRC Safety Evaluation Report regarding Chapter 5 of the EPRI Requirements Document for Advanced LWRs. Representatives of the NRC staff and ERPI will participate as appropriate.

2:15 p.m.–3:45 p.m.: Emergency Operating Procedures and Probabilistic Risk Assessment for Shutdown Modes of Reactor Operation (Open)—Representatives of the NRC staff will brief the Committee regarding the status of emergency operating procedures and PRAs for shutdown modes of reactor operation.

3:45 p.m.–5:15 p.m.: ACRS Subcommittee Activities (Open)—The Committee will hear and discuss reports regarding the status of subcommittee activity in designated areas of responsibility including thermal-hydraulic phenomena, reliability of fire dampers, and related matters.

5:15 p.m.–6:00 p.m.: NRC Personnel Policies and Practices (Closed)—The Committee will discuss the status of proposed NRC pesonnel action.

This session will be closed to discuss internal personnel practices of the agency and information the release of which would represent an unwarranted invasion of personal privacy.

Friday, July 13, 1990, Room P–110, 7920 Norfolk Avenue, Bethesda, MD.

8:30 a.m.–10 a.m. and 10:15 a.m.–11:15 a.m.: Nuclear Power Plant Operating Experience (Open/Closed)—Representatives of the NRC staff will breif the Committee and discuss recent operating events and incidents including the discovery of indications and cracks in reactor pressure vessel heads and a primary system pressurizer, malfunction of residual decay heat removal pumps, a proposed change in frequency of steam turbine stop valve testing in Westinghouse nuclear plants, and miscellaneous other items as appropriate.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to these events.

11:15 a.m.–12 Noon: Future ACRS Activiteis (Open)—The members will discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

1 p.m.–2:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed reports to NRC regarding items considered during this meeting.

2:45 p.m.–4 p.m.: ACRS Subcommittee Activities (Open)—The Committee will discuss procedures for conduct of ACRS subcommittee and subgroup meetings.

4 p.m.–6 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue discussion of proposed ACRS reports to the NRC, as appropriate.

Saturday, July 14, 1990, Room P–110, 7920 Norfolk Avenue, Bethesda, Md. (Open)

8:30 a.m.–11:30 a.m.: Preparation of ACRS Reports (Open)—The Committee will complete preparation of ACRS reports to the NRC.

11:30 a.m.–12:30 p.m.: Miscellaneous (Open)—The Committee will complete the discussion of items considered during this meeting and related matters.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 27, 1989 (54 FR 39594). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limted to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subseciton 10(d) Public Law 92–463 that it is necessary to close portions of this meeting noted above to discuss internal personnel practices of the agency (5 U.S.C. 552b(c)(2)), information the release of which would represent an unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)), and Proprietary Information applicable to the matter being discussed (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be disucssed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492–8049), between 7:45 a.m. and 4:30 p.m.

Dated: June 18, 1990.

Samuel J. Chilk,

Acting Advisory Committee Management Officer.

[FR Doc. 90–14480 Filed 6–21–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–424 and 50–425]

Georgia Power Co., et al.; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–68 and NPF–81, issued to Georgia Power Company, et al. (the licensee), for operation of the Vogtle Electric Generating Plant (VEGP), Units 1 and 2, located in Burke County, Georgia.

On May 23, 1990, the licensee entered the 72 hour action statement associated with Technical Specification (TS) 3.8.1 after the Unit 1 "B" emergency diesel generator (EDG) failed the applicable Surveillance Requirements (SRs). Troubleshooting and additional EDG testing indicated that the most likely cause for the failure was the high jacket water temperature (HJWT) switches. These switches were new and had been recently installed and calibrated per the revised calibration procedure (incorporating lessons learned from Wyle Lab tests). The licensee left the 72 hour action statement of Limited Condition for Operation 3.8.1 on May 25, 1990, after having reinstalled the original HJWT switches into the 1B EDG and successfully performing the required surveillance testing. However, given recent operating experience, particularly the March 20, 1990 event, and the difficulties experienced with HJWT trips, the licensee thought it prudent in terms of enhanced plant safety to bypass the HJWT trip for all emergency starts.

The licensee promptly notified the Commission of its intention to install a modification to manually bypass the HJWT trips and the need for a TS change to TS 4.8.1.1.2h(6)(c). The licensee then subsequently submitted a TS change request in a expeditious manner. The Commission's staff concurred with the licensee's assessment and provided a Temporary Waiver of Compliance on May 25, 1990, from TS 4.8.1.1.2h(6)(c) until such time that the TS amendments could be processed. Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the May 25, 1990 amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined that the TS change request involves no significant hazards consideration as defined in 10 CFR 50.92. In support of this conclusion the licensee provided the following:

> In order to accomodate [sic] the current design, the Technical Specifications require verification that all automatic diesel generator trips are automatically bypassed upon loss of voltage on the emergency bus concurrent with a Safety Injection Actuation signal, except for engine overspeed, generator differential, low lube oil pressure and high jacket water temperature. The proposed Technical Specification change will note that the jacket water temperature trip may be bypassed. The high jacket water temperature trip is designed to protect the diesel generator from a loss of engine cooling. For such an event, the safety function would be provided by the diesel for the other train. During an accident, the advantage of the automatic trip is small relative to the increased reliability achieved by reducing the possibility of a spurious trip.
>
> (1) This change will not increase the probability of an accident previously evaluated because it does not affect any of the design basis events that have been previously evaluated in the FSAR. The analyses of accident consequences do not take credit for the ability to restart a diesel following a diesel generator trip. Therefore, this change will not affect the previously evaluated consequences.

(2) The revision to the Technical Specification will not create the possibility of a new or different kind of accident from any accident previously evaluated. No new modes of operation are being imposed on the plant and the diesel generators will continue to perform their function as designed.

(3) The revision does not result in a significant reduction in the margin of safety provided for events involving a loss of electric power. The proposed revision will allow the implementation of a modification which is intended to improve the reliability of the diesel generators by minimizing the possibility of spurious trips.

The Commission's staff has reviewed the licensee's no significant hazards consideration determination analysis and agrees with its conclusion. Therefore, the staff proposes to determine that the application for amendments does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within fifteen (15) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 23, 1990, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists which the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendments are issued before the expiration of 30 days, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendments and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendment request involves no significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendments until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 15-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may

be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to David B. Matthews: petitioners' name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Candler Building, Suit 1400, 127 Peachtree Street NE., Atlanta, Georgia 30303, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 25, 1990, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room, the Burke County Library, 412 Fourth Street, Waynesboro, Georgia, 30043.

Dated at Rockville, Maryland, this 15th day of June, 1990.

For the Nuclear Regulatory Commission.

Timothy A. Reed,

Acting Director, Project Directorate II-3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90–14476 Filed 6–21–90; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Meeting

Purusant to the Nuclear Waste Technical Review Board's (NWTRB) authority under section 5051 on Public Law 100–203 of the Nuclear Waste Policy Amendments Act of 1987, the Board will meet July 23–25, 1990, at the Westin Peachtree Plaza Hotel (Henry Grady Room), 210 Peachtree Street, Atlanta, Georgia 30303; (404) 659–1400. The full Board will meet on Monday, July 23 from 8 a.m. to 12 p.m. for a briefing by the U.S. Nuclear Regulatory Commission on the licensing support system that will be used to license the design, construction, and operation of a permanent repository for high-level nuclear waste.

On July 24–25, the Board's Structural Geology & Geoengineering (SG&G) and the Hydrogeology & Geochemistry (H&G) panels will hold a two-day, joint meeting from 8 a.m. to 5 p.m. also in the Henry Grady Room. Discussions at this meeting will focus on the exploratory shaft facility and the surface-based testing program that are planned for the Yucca Mountain site. Both meetings are open to the public.

The Board, under authority of section 5051 of Public Law 100–203 of the Nuclear Waste Policy Amendments Act (NWPAA) of 1987, has respnsibility to oversee the efforts of the Department of Energy (DOE) to develop a geologic repository for the permanent disposal of commercial spent nuclear fuel and defense high-level nuclear waste. In the NWPAA, the U.S. Congress selected Yucca Mountain as the sole site for characterization by the U.S. Department of Energy as a potential repository.

In addition to the meetings outlined above, the Board will gather after lunch on July 23 and from 8 a.m. to 5 p.m. on July 26, 1990, to review the work of its panels to date and to discuss internal administrative and personnel matters. These portions of the Board's meeting will be closed to the public.

Anyone wishing to attend any portion of the above open meetings should contact Helen Einersen, if possible, on or before July 18, 1990, (202–254–4473). The open portions of the meetings will be transcribed and the transcripts will be available for loan to the public on a first-come, first-served basis beginning August 15, 1990.

For further information contact Paula N. Alford, Director, External Affairs, 1100 Wilson Boulevard, Suite 910, Arlington, Virginia 22209; 703–235–4473.

Dated: June 18, 1990.

Dr. William D. Barnard,

Acting Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 90–14539 Filed 6–21–90; 8:45 am]

BILLING CODE 6820-AM-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–28128; File No. SR–PHLX–90–10]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Index Warrants and the Ability of Specialists and Registered Options Traders to Provide Quotations for Their Respective Options during Extraordinary Market Conditions

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 21, 1990, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX pursuant to Rule 19b–4 under the Act, hereby proposes to adopt Floor Procedure Advice F–10—Extraordinary Market Conditions [i.e., fast markets]. The following constitutes the text of the proposed rule change

F–10 Extraordinary Market Conditions (Fast Markets)

In the interest of maintaining a fair and orderly market under unusual trading conditions for one or more class of options, two floor officials may declare a "fast market" for these options. Regular trading procedures shall be resumed when two Floor officials determine that the conditions supporting that declaration no longer exist.

During the period for which a fast market is in effect, displayed quotes for the respective options are not firm and volume guarantees of Option Advice A–11 are not applicable, but the respective specialists and trading crowds are required to use best efforts to update quotes and fill incoming orders in accordance with Advice A–11.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of,

and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change codifies existing practice on the Exchange's option floors respecting the determination of extraordinary market conditions, *i.e.*, fast markets. The proposed rule change operates to relieve options specialists and registered options traders of their responsibilities respecting bids and offers pursuant to PHLX Rule 1033 as well as the corollary to existing Floor Procedure Advice A–11—Ten Up Markets. It should be noted that the proposed rule change is substantially similar to the Chicago Board Options Exchange's ("CBOE") Rule 6.6—Unusual Market Conditions. The proposal would operate by allowing two floor officials to declare a "fast market" when unusual trading conditions for more than one class of options exist which is comparable to the CBOE's Rule 6.6. The proposal also provides that regular trading procedures shall be resumed when two floor officials determine that market conditions supporting the declaration no longer exists.

The Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to further promote the mechanism of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comment on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 13, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 18, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–14518 Filed 6–21–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17538; 812–7520]

The One Germany Fund; Application

June 19, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: The One Germany Fund, Inc., a closed-end-nondiversified investment company registered under the 1940 Act.

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to section 6(c) of the 1940 Act for exemptions from the provisions of section 12(d)(3) of such Act and Rule 12d3–1 thereunder.

SUMMARY OF APPLICATION: Applicant seeks an order exempting it from the prohibitions of section 12(d)(3) of the 1940 Act to the extent necessary to allow it to acquire securties of foreign issuers engaged in securities-related activities in accordance with the conditions of proposed amendments to Rule 12d3–1 under the 1940 Act.

FILING DATE: The application was filed on May 18, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Application with a copy of the request, personnally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 16, 1990, and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 55 Broad Street, New York, New York 10004, Attention: Robert Hock.

FOR FURTHER INFORMATION CONTACT: Robert A. Robertson, Staff Attorney, at (202) 504–2283, or Stephanie M. Monaco, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant represents that it is non-diversified closed-end management investment company organized as a Maryland corporation and registered under the 1940 Act.

2. Applicant seeks to achieve capital appreciation by investing primarily in equity securities of West German companies. Applicant's general investment policy under normal circumstances is to invest at least 75% of its total assests in equity and equity-linked securities of West German

companies. Up to 25% of Applicant's total assets may be invested in debt securities rated A or better by Moody's Investors Service, Inc. or Standard & Poor's Corporation (or, in the opinion of Applicant's investment adviser, of equivalent quality) of West German companies, and equity and equity-linked securities of issuers domiciled in other European Community countries, Austria, Switzerland, Norway, Sweden, Finland, and Eastern Europe, including East Germany. Applicant's investment adviser is Commerz International Capital Management GmbH.

3. In order to diversify further, Applicant proposes investments in securities of foreign issuers engaged in securities-related activities to the extent set forth in the application.

4. Section 12(d)(3) of the 1940 Act prohibits a registered investment company from purchasing a security issued by a broker, dealer, underwriter or investment adviser unless, among other things, the security of such an issuer is a "margin security," as that term is defined in Regulation T of the Board of Governors of the Federal Reserve System (the "Federal Reserve"). Until very recently, few equity securities issued outside the United States qualified as "margin securties." However, under recent amendments to Regulation T, certain equity securities issued outside the United States can now qualify as margin securities. In particular, any foreign equity security meeting specified qualification requirements will be eligible for marginability, provided that it appears on the list of "foreign margin stocks" to be published quarterly by the Federal Reserve. However, Applicant understands that the first such list may not be released for several months. Until such list is available, most securities issued outside the United States will not be "margin securities" for purposes of Rule 12d3–1(b)(4).

5. Applicant seeks relief from section 12(d)(3) and Rule 12d3–1 under the 1940 Act to the extent permitted by proposed amendments to Rule 12d3–1. See Investment Company Act Release No. 17096 (August 3, 1989). The proposed amendments to Rule 12d3–1 would, among other things, facilitate the acquisition by registered investment companies of equity securities issued by foreign securities firms.

Applicant's Legal Conclusions

1. Section 12(d)(3) of the 1940 Act prohibits an investment company from acquiring any security issued by any person who is a broker, a dealer, an underwriter, or an investment banker. Rule 12d3–1 under the 1940 Act provides an exemption from section 12(d)(3) for investment companies acquiring securities of an issuer that derived more than 15% of its gross reveneus in its most recent fiscal year from securities-related activities.

2. Applicant represents that its proposed acquisition of securities issued by foreign securities companies will comply with the provisions of current Rule 12d3–1, except subparagraph (b)(4) thereof. Subparagraph (b)(4) of Rule 12d3–1 provides that, "any equity security of the issuer * * * [must be] a 'margin security' as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System." Since a "margin security" generally must be one that is traded in the United States markets, securities issued by many foreign securities firms would not meet this test. Accordingly, Applicant seeks an exemption only from the "margin security" requirements of Rule 12d3–1.

3. Proposed amendment Rule 12d3–1 provides that the "margin security" requirements would be excused if the acquiring company purchases the equity securities of foreign securities companies that meet criteria comparable to those applicable to equity securities of United States securities-related businesses. The criteria, as set forth in the proposed amendments, "are based particularly on the policies that underlie the requirements for inclusion on the list of over-the-counter margin stocks." Investment Company Act Release No. 17096 (August 3, 1989).

Applicant's Conditions

If the requested order is granted, Applicant agrees to the following conditions:

1. Applicant will comply with the proposed amendments to Rule 12d3–1 and agrees, in addition, to comply with the terms of the proposed amendments to Rule 12d3–1 as they may be further revised, adopted or amended, including provision, if any, with respect to the eligibility of "margin securities" for purchase by an investment company.

2. Applicant will not invest in any securities issued by Commerzbank or any of its affiliates engaged in securities-related activities.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–14519 Filed 6–21–90; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before July 23, 1990. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: William Cline, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416, Telephone: (202) 653–8538.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395–7340.

Title: Application for Certification as a Certified Development Company
Form Nos.: SBA Forms 1246
Frequency: On occassion
Description of respondents: Applicants to become CDC's
Annual Responses: 15
Annual Burden Hours: 150

Title: National Training Participant Evaluation Questionaire
Form Nos.: SBA Form 20
Frequency: On occassion
Description of respondents: Individuals receiving SBA training and counseling assistance.
Annual Responses: 20,000
Annual Burden Hours: 5,000

Title: Representatives and Compensation Received for Services in Connection with the SBA 8(a) Program.
Form Nos.: SBA Form 1722
Frequency: Semi-Annual
Description of respondents: 8(a) program participants.

Annual Responses: 8,000
Annual Burden Hours: 8,000
Title: Survey of Commercialization Activities of SBIR Awardees
Form Nos.: n/a
Frequency: On occassion
Description of respondents: SBIR program participants
Annual Responses: 700
Annual Burden Hours: 83

William Cline,
Chief, Administrative, Information Branch.

[FR Doc. 90-14458 Filed 6-21-90; 8:45 am]
BILLING CODE 8025-01-M

[License No. 06/10-0154]

Enterprise Capital Corporation; Filing of Application for Approval of a Conflict of Interest Transaction

Notice is hereby given that Enterprise Capital Corporation (ECC), 515 Post Oak Blvd., suite 310, Houston, TX 77027, a Federal licensee under the Small Business Investment Act of 1958, as amended (Act), has filed an application with the Small Business Administration (SBA) pursuant to section 312 of the Act and covered by § 107.903 of the SBA Regulations governing Small Business Investment Companies (13 CFR 107.903 (1990)), for approval of a conflict of interest transaction falling within the scope of the above section of the Act and Regulations.

Subject to such approval ECC proposes to provide financing to U.S. Long Distance Corp. (USLD) 9331 San Pedro, suite 300, San Antonio, TX 78216. The facts and circumstances concerning this financing are as follows:

Mr. Gary Becker, son of Alen J. Becker (the sole stockholder of ECC), is a director of USLD. Messrs. Allen J. Becker and Barry M. Lewis directors of ECC, also own stock in USLD. The total stock ownership of the Becker's and Lewis is less than 4 percent of the total outstanding stock of USLD. Mr. Gary Becker is one of seven directors of USLD but is not an employee of USLD.

Therefore, the proposed financing is brought within the purview of § 107.903 of the Regulations since USLD is considered to be an Associate of ECC as defined in § 107.3(f) of the Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this notice, submit to SBA, in writing, relevant comments on the proposed transaction. Any such communication should be addressed to the Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in the San Antonio, Texas area.

(Catalog of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies)

Dated: June 18, 1990.

Robert G. Lineberry,
Associate Administrator for Investment.

[FR Doc. 90-14460 Filed 6-21-90; 8:45 am]
BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2431]

Indiana; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on June 4, 1990, and an amendment thereto on June 6, 1990, I find that the Counties of Brown, Clark, Crawford, Daviess, Dearborn, Floyd, Franklin, Gibson, Greene, Harrison, Jackson, Jefferson, Jennings, Knox, Lawrence, Martin, Montgomery, Ohio, Orange, Pike, Posey, Ripley, Scott, Switzerland, Vermillion, Warrick, and Washington in the State of Indiana constitute a disaster area as a result of damages caused by severe storms, flooding, and tornadoes beginning on May 15, 1990. Applications for loans for physical damage may be filed until the close of business on August 6, 1990, and for loans for economic injury until the close of business on March 4, 1991, at the address listed below.

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd, 14th Fl., Atlanta, Georgia 30308.

or other locally announced locations. In addition, applications for economic injury loans from small business located in the contiguous counties of Bartholomew, Boone, Clay, Clinton, Decatur, Dubois, Fayette, Fountain, Hendricks, Johnson, Monroe, Morgan, Owen, Parke, Perry, Putnam, Rush, Spencer, Sullivan, Tippe-Canoe, Union Vangerburgh, Vigo, and Warren in the State of Indiana,; Crawford, Edgar, Gallatin, Lawrence, Vermilion, Wabash, and White Counties in the State of Illinois; Boone, Bullitt, Carroll, Daviess, Gallatin, Hardin, Henderson, Jefferson, Meade, Oldham, Trimble, and Union Counties in State of Kentucky; and Bulter and Hamilton Counties in the State of Ohio may be filed until the specified date at the above location.

The interest rates are:

	Percent
For physical damage:	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	9.250
For economic injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage for the State of Indiana is 243106. For economic injury the numbers are 707800 for the State of Indiana; 707900 for the State of Illinois; 708000 for the State of Kentucky, and 708100 for the State of Ohio.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 17, 1990.

Bernard Kulik,
Assistant Administrator for Disaster Assistance.

[FR Doc. 90-14459 Filed 6-21-90; 8:45 am]
BILLING CODE 8025-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-74]

Suspension of Section 302 Investigation; Ban on Government Procurement of Foreign Satellites by the Government of Japan

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of suspension of investigation initiated under section 302 of the Trade Act of 1974, as amended.

SUMMARY: The United States Trade Representative (USTR) has suspended an investigation initiated under section 302 of the Trade Act of 1974 as amended (Trade Act) with respect to the Government of Japan's ban on government procurement of foreign satellites, having entered into an agreement with the Government of Japan on this matter.

DATES: This investigation was suspended effective June 15, 1990.

FOR FURTHER INFORMATION CONTACT: Joe Massey, Assistant U.S. Trade Representative for Japan and China, (202) 395-3900, or D. Holly Hammonds,

Associate General Counsel, (202) 395–7305.

SUPPLEMENTARY INFORMATION: On June 16, 1989, the USTR initiated an investigation under section 302(b)(1) of the Trade Act of 1974, as amended ("the Trade Act"), concerning Japan's exclusionary practices with respect to government procurement of satellities (54 FR 26136). These practices had been identified on May 26, 1989 as "priority practices" of a "priority country" under section 310(a)(1) of the Trade Act (54 FR 24438). Section 310(b) of the Trade Act requires that the USTR initiate, under section 302(b)(1), investigations with respect to any practice so identified, in order to determine whether it is actionable under section 301 of the Trade Act.

Under section 310(c)(1) of the Trade Act, the USTR must consult with the foreign government concerned and seek in such consultations to negotiate an agreement which provides for—

(A) the elimination of, or compensation for, the priority practices identified under subsection (a)(1)(A) by no later than the close of the 3-year period beginning on the date on which such investigation is initiated, and

(B) the reduction of such practices over a 3-year period with he expectation that United States exports to the foreign country will, as a result, increase incrementally during each year within such 3-year period.

Section 310(c)(2) of the Trade Act provides that if such an agreement is entered into with a foreign country before the date on which any action may be required under section 305 to be implemented, then the investigation in question shall be suspended.

On June 15, 1990, the USTR concluded with the Government of Japan an exchange of letters, with attachments, concerning government satellite procurement. This exchange of letters constitutes an agreement as described in section 310(c)(1) of the Trade Act. The investigation under Section 302 of the Trade Act of exclusionary procurement of satellites by Japan was therefore suspended, effective June 15, 1990.

The USTR further determined that it is appropriate to monitor the implementation of the agreement entered into with Japan. Monitoring will include but not be limited to consideration of overall compliance with the procedures, application of those procedures to actual procurements by the Government of Japan, and review of the handling of any complaints. Monitoring questions may be discussed with Japanese Government representatives when consultations have been requested or at other times as appropriate.

Reasons for Determinations

Suspension Under Section 310

Section 310 of the Trade Act of 1974, as amended (19 U.S.C. 2420) required the USTR in 1989 to identify as "priority practices" foreign trade barriers the elimination of which is likely to increase U.S. exports, either directly or through establishing a beneficial precedent. Accordingly, on May 26, 1989, the Administration identified as a "priority practice" the Government of Japan's exclusionary practices with respect to government procurement of satellites (54 FR 24438). The Administration also identified Japan as a "priority country" under section 310(a)(1) of the Trade Act. The announcement noted that as part of a "long range vision on space development" Japan had prohibited the procurement of foreign satellities by government entities if such a purchase interfered with "indigenous development objectives". Japan's policy of promoting indigenous production capability by prohibiting government procurement of foreign satellities applied to the entire range of satellites (broadcast, communications, earth resource, weather). The United States has long been the world leader in satellite production, and was thus denied significant market opportunities by this policy.

In accordance with section 310(b) of the Trade Act, on June 16, 1989, the USTR initiated an investigation pursuant to section 302(b)(1) of the Trade Act of this "priority practice", in order to determine whether it is actionable udner section 301 of the Trade Act. As required by section 303 of the Trade Act, the United States promptly requested consultations with the Government of Japan.

The United States then sought, as required by section 310(c)(1) of the Trade Act, to negotiate an agreement providing for (a) The elimination of, or compensation for, these priority practices by no later than the close of the 3-year period beginning on June 16, 1989, and (b) the reduction of such practices over a 3-year period with the expectation that United States exports to Japan will, as a result, increase incrementally during each year within such 3-year period.

On June 15, 1990, the USTR executed an exchange of letters with the Japanese Ambassador regarding actions the Government of Japan is taking with effect from that date to improve access for U.S. firms to its market and specifying detailed new procedures for the procurement of satellites by the Japanese government and government controlled entities. This exhange of letters incorporated and amplified the agreement in principle that had been reached in March 1990. The Government of Japan also agreed in the June 15 exchange of letters to consult bilaterally as appropriate on the operation of the new procedures, as well as to provide a bid protest procedure for private parties.

More specifically:

- The Government of Japan stated its intention to adopt new procedures to procure satellites. Purchasing entities will follow open, transparent and non-discriminatory procedures in making acquisitions of satellites. Procedures will accord with the GATT Agreement on Government Procurement, as amended, as well as with the new procedures established by the Government of Japan.
- The Government of Japan has removed its explicit restriction on the procurement of foreign satellites by GOJ entities. The procurement of all satellites, other than R&D satellites and R&D payloads on non-R&D satellites, by the Government of Japan or any entity whose satellite procurement procedures are subject to direct or indirect government control, including NTT and NHK, will be conducted in accordance with the new satellite procurement procedures.
- The Government of Japan will take measures to alter the existing CS–4 project into an R&D satellite.
- "R&D" satellites and payloads will be defined as those designed and used entirely or almost entirely for the purpose of in-space development and/or validation of technologies new to either country, and/or non-commercial scientific research.
- The Government of Japan will review annually with the United States the operation of the procedures, and will consult on any matter at USG request.
- New procedures will be established to receive and consider complaints from private parties regarding the acquisition of satellites by the Government of Japan, and means will be provided to resolve such complaints promptly and equitably.
- The classification of satellites as R&D or non-R&D will also be transparent, and will be subject to bilateral consultations where questions arise.

The USTR has determined that the exchange of letters of June 15, 1990, together with its attachments, constitutes an agreement pursuant to section 310(c)(1) of the Trade Act. Consequently, the investigation of exclusionary government procurement of satellites by the Government of Japan (Docket No. 301–74) is suspended

pursuant to section 310(c)(2) of the Trade Act.

(2) Monitoring

The United States will monitor Japan's implementation of these market-opening actions, and will seek a satisfactory resolution of any additional concerns in bilateral consultations and the annual reviews provided for in the above agreement.

If the USTR determines that Japan is not in compliance with this agreement, then, pursuant to section 310(c)(3) of the Trade Act, the investigation suspended shall resume as if it had not been suspended.

A. Jane Bradley,

Chairman, Section 301 Committee.

[FR Doc. 90-14543 Filed 6-21-90; 8:45 am]

BILLING CODE 3190-01-M

[Docket No. 301-76]

Suspension of Section 302 Investigation; Japanese Restrictions Affecting Imports of Forest Products

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of suspension of investigation initiated under section 302 of the Trade Act of 1974, as amended.

SUMMARY: The United States Trade Representative (USTR) has suspended an investigation initiated under section 302 of the Trade Act of 1974 as amended (Trade Act) regarding the Government of Japan's policies and practices that restrict imports of wood products, having entered into an agreement with the Government of Japan on this matter.

DATES: This investigation was suspended effective June 15, 1990.

FOR FUTHER INFORMATION CONTACT: Don Phillips, Assistant U.S. Trade Representative for Industry, (202) 395-5656, or Richard Steinberg, Assistant General Counsel, (202) 395-7305.

SUPPLEMENTARY INFORMATION: On June 16, 1989, the USTR initiated an investigation under section 302(b)(1) of the Trade Act of 1974, as amended ("the Trade Act"), concerning Japan's import restrictions on forest products (54 FR 26137). These practices had been identified on May 26, 1989 as "priority practices" of a "priority country" under section 310(a)(1) of the Trade Act (54 FR 24438). Section 310(b) of the Trade Act requires that the USTR initiate, under section 302(b)(1), investigations with respect to any practice so identified, in order to determine whether it is actionable under section 301 of the Trade Act.

Under section 310(c)(1) of the Trade Act, the USTR must consult with the foreign government concerned and seek in such consultations to negotiate an agreement which provides for—

(A) the elimination of, or compensation for, the priority practices identified under subsection (a)(1)(A) by no later than the close of the 3-year period beginning on the date on which such investigation is initiated, and

(B) the reduction of such practices over a 3-year period with the expectation that United States exports to the foreign country will, as a result, increase incrementally during each year within such 3-year period.

Section 310(c)(2) of the Trade Act provides that if such an agreement is entered into with a foreign country before the date on which any action may be required under section 305 to be implemented, then the investigation in question shall be suspended.

On June 15, 1990, the USTR concluded with the Government of Japan an exchange of letters, with attachment, concerning forest products. This exchange of letters constitutes an agreement as described in section 310(c)(1) of the Trade Act. The investigation under section 302 of the Trade Act of Japan's policies and practices restricting the import of forest products is therefore suspended, effective June 15, 1990.

The USTR further determined that it is appropriate to monitor the implementation of the agreement entered into by Japan. Monitoring will include but not be limited to consideration of overall compliance with the procedures, provisions, and understandings in or relating to the agreement and the resolution of any complaints should any be filed. In monitoring and evaluating Japanese performance of the obligations undertaken in the agreement, consideration will be given to the intent and objectives of the provisions contained therein. Monitoring questions may be discussed with Japanese Government representatives when appropriate.

Reasons for Determinations

(1) Suspension Under Section 310

Section 310 of the Trade Act of 1974, as amended (19 U.S.C. 2420) required the USTR in 1989 to identify as "priority practices" foreign trade barriers the elimination of which is likely to increase U.S. exports, either directly or through establishing a beneficial precedent. Accordingly, on May 26, 1989, the Administration identified as a "priority practice" the Government of Japan's policies and practices which restrict imports of forest products (54 FR 26137). The Administration also identified Japan as a "priority country" under section 310(a)(1) of the Trade Act. The announcement noted that exports of United States forest products to Japan were being restricted by Japanese policies and practices. For example, U.S. forest products suppliers faced wood grading requirements, testing standards which impeded U.S. exports, as well as technical standards and specifications, certification processes, and building codes which limited the use and access of U.S. forest products.

In accordance with section 310(b) of the Trade Act, on June 16, 1989 the USTR initiated an investigation pursuant to section 302(b)(1) of the Trade Act, of this "priority practice", in order to determine whether it is actionable under section 301 of the Trade Act. As required by section 303 of the Trade Act, the United States promptly requested consultations with the Government of Japan.

The United States then sought, as required by section 310(c)(1) of the Trade Act, to negotiate an agreement providing for (a) The elimination of, or compensation for, these priority practices by no later than the close of the 3-year period beginning on June 16, 1989, and (b) the reduction of such practices over a 3-year period with the expectation that United States exports to Japan will, as a result, increase incrementally during each year within such 3-year period.

In consultations with the Government of Japan on April 26-27, 1990, Japanese Government officials gave U.S. negotiators a written, detailed set of commitments it will undertake with respect to forest products; subsequently, technical rectifications to those commitments and clarifications were made. On June 15, 1990, the USTR executed an exchange of letters with the Japanese Ambassador regarding actions the Government of Japan is taking and will take to improve access for U.S. wood products to its market. This exchange of letters incorporated and amplified the commitments upon which agreement had been reached in April, as rectified and clarified.

More specifically:

- Japan agreed to take a positive stance on wood products tariff reductions in the Uruguay Round negotiations, to reduce overall tariff rates on certain wood products by a specified target amount, and to achieve low tariffs on these products as a result of these negotiations. Japan further agreed that initial staged reductions will be greater than subsequent staged reductions in order to achieve

immediate substantial improvement in market access.

- Japan agreed to change building standards and requirements so that they are based on performance requirements and so that they will permit increased use of wood products.
- Japan agreed to open and expeditious certification of wood products, to revise and adopt new certification standards, and to facilitate approval of U.S. wood products as meeting Japanese standards.
- Japan agreed to establish a Japanese Agricultural Standards (JAS) Technical Committee and a Building Experts Committee, in cooperation with the United States, to monitor these changes, consistent with the terms of the agreement.
- Japan agreed to change the tariff classification of certain laminated wood products.
- Japan agreed that in order not to undermine the objectives of the agreement, any existing or future subsidies to manufacturers of forest products shall be consistent with the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade, as well as the OECD Statement on Positive Adjustment Policies of 1982.
- Japan agreed to the establishment of a Wood Products Subcommittee of the U.S.-Japan Trade Committee, composed of senior officials from the Governments of the United States and Japan, to resolve disputes and oversee the implementation of the measures set forth in the agreement.

The USTR has determined that the exchange of letters of June 15, 1990, together with its attachment and associated understandings, constitutes an agreement pursuant to section 310(c)(1) of the Trade Act. Consequently, the investigation of the Government of Japan's policies and practices that restrict imports of forest products (Docket No. 301-76) is suspended pursuant to section 310(c)(2) of the Trade Act.

(2) Monitoring

The United States will monitor Japan's implementation of these market-opening actions, and will seek a satisfactory resolution of any additional concerns in bilateral consultations provided for in the above agreement.

If the USTR determines that Japan is not in compliance with this agreement, then, pursuant to section 310(c)(3) of the Trade Act, the investigation suspended shall resume as if it had not suspended.

A. Jane Bradley,

Chairman, Section 301 Committee.

[FR Doc. 90-14544 Filed 6-21-90; 8:45 am]

BILLING CODE 3190-01-M

[Docket No. 301-75]

Suspension of Section 302 Investigation; Exclusionary Government Procurement of Supercomputers by the Government of Japan

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of suspension of investigation initiated under section 302 of the Trade Act of 1974, as amended.

SUMMARY: The United States Trade Representative (USTR) has suspended an investigation initiated under section 302 of the Trade Act of 1974, as amended (Trade Act) regarding the Government of Japan's government procurement practices with respect to supercomputers, having entered into an agreement with the Government of Japan on this matter.

DATES: This investigation was suspended effective June 15, 1990.

FOR FURTHER INFORMATION CONTACT: William Piez, Deputy Assistant U.S. Trade Representative for Japan and China, (202) 395-5070, or D. Holly Hammonds, Associate General Counsel, (202) 395-7305.

SUPPLEMENTARY INFORMATION: On June 16, 1989, the USTR initiated an investigation under section 302(b)(1) of the Trade Act of 1974, as amended ("the Trade Act"), concerning Japan's government procurement practices with respect to supercomputers (54 FR 26137). These practices had been identified on May 26, 1989 as "priority practices" of a "priority country" under section 310(a)(1) of the Trade Act (54 FR 24438). Section 310(b) of the Trade Act requires that the USTR initiate, under section 302(b)(1), investigations with respect to any practice so identified, in order to determine whether it is actionable under section 301 of the Trade Act.

Under section 310(c)(1) of the Trade Act, the USTR must consult with the foreign government concerned and seek in such consultations to negotiate an agreement which provides for—

(A) the elimination of, or compensation for, the priority practices identified under subsection (a)(1)(A) by no later than the close of the 3-year period beginning on the date on which such investigation is initiated, and

(B) the reduction of such practices over a 3-year period with the expectation that United States exports to the foreign country will, as a result, increase incrementally during each year within such 3-year period.

Section 310(c)(2) of the Trade Act provides that if such an agreement is entered into with a foreign country before the date on which any action may be required under section 305 to be implemented, then the investigation in question shall be suspended.

On June 15, 1990, the USTR concluded with the Government of Japan an exchange of letters, with attachment, concerning supercomputer procurement. This exchange of letters constitutes an agreement as described in section 310(c)(1) of the Trade Act. The investigation under section 302 of the Trade Act of exclusionary procurement of supercomputers by Japan was therefore suspended, effective June 15, 1990.

The USTR further determined that it is appropriate to monitor the implementation of the agreement entered into by Japan. Monitoring will include but not be limited to consideration of overall compliance with the procedures, provisions for adequate funding of procurements of supercomputers, application of those procedures to actual procurements by the Government of Japan, including those currently underway, and review of the handling of complaints should any be filed. Monitoring questions may be discussed with Japanese Government representatives at annual reviews or at other times as appropriate.

Reasons for Determinations

(1) Suspension Under Section 310

Section 310 of the Trade Act of 1974, as amended (19 U.S.C. 2420) required the USTR in 1989 to identify as "priority practices" foreign trade barriers the elimination of which is likely to increase U.S. exports, either directly or through establishing a beneficial precedent. Accordingly, on May 26, 1989, the Administration identified as a "priority practice" the Government of Japan's exclusionary practices with respect to government procurement of supercomputers (54 FR 24438). The Administration also identified Japan as a "priority country" under section 310(a)(1) of the Trade Act. The announcement noted that the United States supercomputer industry had been effectively denied access to the Japanese public sector market despite a 1987 agreement with Japan on supercomputers, and that the Government of Japan had engaged in a veriety of practices affecting the procurement process which resulted in

the purchase of supercomputers from indigenous producers. For example, U.S. supercomputer suppliers had found themselves excluded from serious consideration in Japanese Government procurements due to technical specifications favoring incumbent Japanese suppliers. U.S. firms had been further disadvantaged by extraordinarily low Japanese Government supercomputer budgets which required massive discounts of up to 80% off list price.

In accordance with section 310(b) of the Trade Act, on June 16, 1989 the USTR initiated an investigation pursuant to section 302(b)(1) of the Trade Act, of this "priority practice", in order to determine whether it is actionable under section 301 of the Trade Act. As required by section 303 of the Trade Act, the United States promptly requested consultations with the Government of Japan.

The United States then sought, as required by section 310(c)(1) of the Trade Act, to negotiate an agreement providing for (a) The elimination of, or compensation for, these priority practices by no later than the close of the 3-year period beginning on June 16, 1989, and (b) the reduction of such practices over a 3-year period with the expectation that United States exports to Japan will, as a result, increase incrementally during each year within such 3-year period.

In consultations with the Government of Japan on March 21–22, 1990, Japanese Government officials gave U.S. negotiators detailed written descriptions of procurement procedures for supercomputers. On June 15, 1990, the USTR executed an exchange of letters with the Japanese Ambassador regarding actions the Government of Japan is taking with effect from March 22, 1990 to improve access for U.S. firms to its market. This exchange of letters incorporated and amplified the procurement procedures upon which agreement had been reached in March 1990. The Government of Japan also agreed in the June 15 exchange of letters to consult bilaterally as appropriate on the operation of the new procedures, and to review them annually, with the first review planned for June 1991.

More specifically:

- The Government of Japan stated its intention to adopt new procedures to introduce supercomputers. Purchasing entities will follow open, competitive and transparent procedures in making acquisitions of supercomputers. Procedures will accord with the GATT Agreement on Government Procurement, as amended, as well as with the new procedures established by the Government of Japan.
- The Japanese Government will seek adequate funds to purchase supercomputers at prices related to those prevailing in the private sector for similar equipment in similar environments.
- Entities will establish specifications for supercomputer purchases based on actual minimum needs of users. Benchmark tests of representative workload will be relied upon primarily to determine the capacity of competing supercomputers to meet actual minumum needs.
- Japanese entities will give credit to bidders who offer superior products or services, and will establish a transparent procedure for allowing such credit.
- The purchase of newly designed computers which are not available for benchmark testing will be permitted only under clearly defined conditions which assure equal treatment of all bidders.
- New procedures are to be established to receive and consider complaints regarding the acquisition of supercomputers by the Government of Japan, and means will be provided to resolve such complaints promptly and equitably.

The USTR has determined that the exchange of letters of June 15, 1990, together with its attachments, constitutes an agreement pursuant to section 310(c)(1) of the Trade Act. Consequently, the investigation of exclusionary government procurement of supercomputers by the Government of Japan (Docket No. 301–75) is suspended pursuant to section 310(c)(2) of the Trade Act.

(2) Monitoring

The United States will monitor Japan's implementation of these market-opening actions, and will seek a satisfactory resolution of any additional concerns in bilateral consultations and the annual reviews provided for in the above agreement.

If the USTR determines that Japan is not in compliance with this agreement, then, pursuant to section 310(c)(3) of the Trade Act, the investigation suspended shall resume as if it had not been suspended.

A. Jane Bradley,

Chairman, Section 301 Committee.

[FR Doc. 90–14545 Filed 6–21–90; 8:45 am]

BILLING CODE 3910–01–M

[Docket No. 301–77]

Section 304 Determinations; Trade-Related Investment Measures Maintained by the Government of India

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of determinations under section 304 of the Trade Act of 1974, as amended ("the Trade Act").

SUMMARY: The United States Trade Representative (USTR) has determined pursuant to section 304(a)(1)(A) of the Trade Act that certain acts, policies and practices of the Government of India with respect to foreign investment in India are unreasonable and burden or restrict U.S. commerce. The USTR has further determined, pursuant to section 304(a)(1)(B) of the Trade Act, that no responsive action under section 301 of the Trade Act is appropriate at this time given the potential for results through the Government of India's participation in the Uruguay Round of multilateral negotiations on trade-related investment measures under the General Agreement on Tariffs and Trade (the "GATT"). Therefore, the USTR has terminated the investigation initiated pursuant to section 302 of the Trade Act, and will review the status of India's practices after the conclusion of the Uruguay Round negotiations and determine at that time whether action under section 301 would be warranted.

DATES: This investigation was terminated effective June 14, 1990.

FOR FURTHER INFORMATION CONTACT: Peter Collins, Director for Southeast Asian and Indian Affairs, (202) 395–6813, or Daniel Price, Deputy General Counsel, (202) 395–6800.

SUPPLEMENTARY INFORMATION: On June 16, 1989, the USTR initiated an investigation under section 302(b)(1) of the Trade Act of 1974 concerning India's trade-restricting investment measures (54 FR 26136). These practices had been identified on May 26, 1989 as "priority practices" of a "priority country" under section 310(a)(1) of the Trade Act (54 FR 24438). Section 310(b) of the Trade Act requires that the USTR initiate, under section 302(b)(1), investigations with respect to any practice so identified, in order to determine whether it is actionable under section 301 of the Trade Act.

Under section 310(c)(1) of the Trade Act, the USTR must consult with the foreign government concerned and seek in such consultations to negotiate an agreement which provides for—

(A) the elimination of, or compensation for, the priority practices identified under

subsection (a)(1)(A) by no later than the close of the 3-year period beginning on the date on which such investigation is initiated, and

(B) the reduction of such practices over a 3-year period with the expectation that United States exports to the foreign country will, as a result, increase incrementally during each year within such 3-year period.

The United States has not yet been able to reach such an agreement with India, but will continue to seek one in the context of the Uruguay Round multilateral negotiations on trade-related investment measures.

Section 304 of the Trade Act required the USTR in this case to determine by June 16, 1990, whether India's practices are unreasonable or discriminatory and burden or restrict U.S. commerce and, if so, to determine what action, if any, to take under section 301 in response.

Reasons for Determinations

(1) India's Acts, Policies and Practices

On the basis of an investigation pursuant to section 302 of the Trade Act and consultations with the Government of India and affected U.S. firms, the USTR found that certain trade-restricting measures imposed by the Government of India are unreasonable, and a burden or restriction on U.S. commerce. Governmental approval is required for all new or expanded foreign investment in India. Approval is conditioned upon a number of criteria, including limits on foreign equity participation. Where approval is granted, the Indian Government often requires investors to use locally-produced goods in the items they produce in India, rather than allowing them to choose the best quality and most cost-effective products. Some investors are also required to meet export targets. These and other requirements adversely affect foreign investors, and result in significant trade distortions.

(2) U.S. Action

The USTR's determination that no responsive action under section 301 of the Trade Act is appropriate at this time takes into account the participation of India in multilateral negotiations on trade-related investment measures that are currently taking place in Geneva, Switzerland, under the GATT. Those negotiations are expected to be concluded in December 1990. If no progress is made on these issues in those negotiations, the USTR will consider at that time whether to take action under section 301 of the Trade Act.

A. Jane Bradley,

Chairman, Section 301 Committee.

[FR Doc. 90-14547 Filed 6-21-90; 8:45 am]

BILLING CODE 3190-01-M

[Docket No. 301-78]

Section 304 Determinations; Insurance Market Barriers Maintained by the Government of India

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of determinations under section 304 of the Trade Act of 1974, as amended ("the Trade Act").

SUMMARY: The United States Trade Representative (USTR) has determined pursuant to section 304(a)(1)(A) of the Trade Act that certain acts, policies and practices of the Government of India with respect to barriers to foreign insurance providers maintained by India are unreasonable and burden or restrict U.S. commerce. The USTR has further determined, pursuant to section 304(a)(1)(B) of the Trade Act, that no responsive action under section 301 of the Trade Act is appropriate at this time given the potential for results through the Government of India's participation in the Uruguay Round of multilateral negotiations on services under the General Agreement on Tariffs and Trade (the "GATT"). Therefore, the USTR has terminated the investigation initiated pursuant to section 302 of the Trade Act, and will review the status of India's practices after the conclusion of the Uruguay Round negotiations and determine at that time whether action under section 301 would be warranted.

DATES: This investigation was terminated effective June 14, 1990.

FOR FURTHER INFORMATION CONTACT: Peter Collins, Director for Southeast Asian and Indian Affairs, (202) 395-6813, or Daniel Price, Deputy General Counsel, (202) 395-6800.

SUPPLEMENTARY INFORMATION: On June 16, 1989, the USTR initiated an investigation under section 302(b)(1) of the Trade Act of 1974 concerning India's barriers to foreign insurance providers (54 FR 26135). These practices had been identified on May 26, 1989 as "priority practices" of a "priority country" under section 310(a)(1) of the Trade Act (54 FR 24438). Section 310(b) of the Trade Act requires that the USTR initiate, under section 302(b)(1), investigations with respect to any practice so identified, in order to determine whether it is actionable under section 301 of the Trade Act.

Under Section 310(c)(1) of the Trade Act, the USTR must consult with the foreign government concerned and seek in such consultations to negotiate an agreement which provides for—

(A) the elimination of, or compensation for, the priority practices identified under subsection (a)(1)(A) by no later than the close of the 3-year period beginning on the date on which such investigation is initiated, and

(B) the reduction of such practices over a 3-year period with the expectation that United States exports to the foreign country will, as a result, increase incrementally during each year within such 3-year period.

The United States has not yet been able to reach such an agreement with India, but will continue to seek one in the context of the Uruguay Round multilateral negotiations on services.

Section 304 of the Trade Act required the USTR in this case to determine by June 16, 1990, whether India's practices are unreasonable or discriminatory and burden or restrict U.S. commerce and, if so, to determine what action, if any, to take under section 301 in response.

Reasons for Determinations

(1) India's Acts, Policies and Practices

On the basis of an investigation pursuant to section 302 of the Trade Act and consultations with the Government of India and affected U.S. firms, the USTR found that certain barriers to foreign insurance providers imposed by the Government of India are unreasonable, and a burden or restriction on U.S. commerce. Private insurance companies are not permitted to sell insurance in India. The state-owned General Insurance Company of India and its four subsidiaries have a monopoly on sales of general insurance, and the state-owned Life Insurance Corporation of India has a monopoly on the sale of life insurance in India.

(2) U.S. Action

The USTR's determination that no responsive action under section 301 of the Trade Act is appropriate at this time takes into account the participation of India in multilateral negotiations on services that are currently taking place in Geneva, Switzerland, under the GATT. Those negotiations are expected to be concluded in December 1990. If no progress is made on these issues in those negotiations the USTR will consider at that time whether to take action under section 301 of the Trade Act.

A. Jane Bradley,

Chairman, Section 301 Committee.

[FR Doc. 90-14548 Filed 6-21-90; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended June 15, 1990

The following Agreements were filed with the Department of transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing:

Docket Number: 46983.
Dated filed: June 15, 1990.
Parties: Members of the International Air Transport Association.
Subject: Composite Cargo Tariff Coodinating Conference.
Proposed Effective Date: July 1, 1990.

Phyllis T. Kaylor,
Chief, Documentary Services Division.

[FR Doc. 90-14442 Filed 6-21-90; 8:45 am]
BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended June 15, 1990

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming applications, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings:

Docket Number: 46978.
Dated filed: June 11, 1990.
Due Date for Answers. Conforming Applications, or Motion to Modify Scope: July 9, 1990.
Description: Application of American Airlines, Inc. pursuant to section 401 of the Act and subpart Q of the Regulations applies for amendment of its certificate of public convenience and necessity for Route 137 so as to authorize air service between Chicago, Illinois, and Moscow, Union of Soviet Socialist Republics, nonstop or via intermediate points in American's certificate.

Phyllis T. Kaylor,
Chief, Documentary Services Division.

[FR Doc. 90-14441 Filed 6-21-90; 8:45 am]
BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

[Docket No. 90-11; Notice 1]

Fuel Economy Standards; Rejection of Petitions

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.
ACTION: Rejection of petitions.

SUMMARY: This notice rejects petitions from Maserati to exempt it from the generally applicable corporate average fuel economy standards for model years (MY) 1986, 1987, and 1989 through 1991, and to establish alternative standards for the company for those model years. The agency has concluded that Maserati has not shown "good cause" for its late filing of the petitions. The agency will address separately Maserati's petition for MY 1992, which was timely filed.

FOR FURTHER INFORMATION CONTACT: Mr. Orron Kee, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Mr. Kee's telephone number is (202) 366-0846.

SUPPLEMENTARY INFORMATION: Title V of Motor Vehicle Information and Cost Savings Act (Cost Savings Act), 15 U.S.C. 2001 *et seq.*, provides for an automotive fuel economy regulatory program under which standards are established for the corporate average fuel economy (CAFE) of the annual production fleets of manufactuers of passenger automobiles and light trucks. The standards for passenger automobiles for MYs 1986-91, the years covered by the petitions for exemption, are: 26 mpg for MYs 1986-88, 26.5 mpg for MY 1989, and 27.5 mpg for MY 1990 and thereafter.

Section 502(c) of the Cost Savings Act provides that a low volume manufacturer of passenger automobiles may be exempted from the generally applicable average fuel economy standards for passenger autombiles if those standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if NHTSA establishes an alternative standard for the manufacturer at its maximum level. Under the Act, a low volume manufacturer is one that manufactures (worldwide) fewer than 10,000 passenger automobiles in the model year for which the exemption is sought (the affected model year) and that manufactured fewer than 10,000 passenger automobiles in the second model year before the affected model year.

NHTSA has promulgated regulations establishing the required contents of and procedures for processing petitions for low volume exemptions from the generally applicable passenger autombile average fuel economy standards. 49 CFR part 525. Section 525.6(b) specifies that each petition for exemption must be filed "not later than 24 months before the beginning of the affected model year, unless good cause for later submission is shown. . . ." *See generally* 41 FR 53827, 53828 (December 9, 1976), and 44 FR 21061, 21065 (April 9, 1979).

Maserati Automobiles Incorporated (MAI) and Officine Alfieri Maserati, S.p.A. (OAM) filed two petitions on April 14, 1989. One petition requested exemption from the generally applicable standards for MYs 1986, 1987, and 1989 and the second petition was for exemption for MYs 1990 through 1992. (This notice refers to MAI and OAM collectively as Maserati). The petitions were untimely for every year except 1992. Maserati offered several arguments purporting to show "good cause" for the late filing. The company's arguments are discussed below.

First, Maserati stated that NHTSA had not responded to that company's May 1983 petition for exemption for MYs 1981 through 1985. "Because of the uncertainty over the status of that petition, MAI (Maserati Automobiles, Incorporated, the American division) was reluctant to file further petitions until the pending matter is resolved."

However, the pending petitions for MYs 1981 through 1985 were not related to petitions for exemption for subsequent model years. None of the factors cited by Maserati would have lessened the desirability of exemptions for MYs 86 and thereafter. Although the company may have been uncertain about the status of the petitions for MYs 1981 through 1985, it would be a certainty that they would not be granted any alternative standard for MY 1986 and thereafter if they did not submit timely petitions.

Maserati also argued that in MY 1984 (around October 1983 when, had they filed, the petition would have been timely for MY 1986), dramatic increases in sales and increasingly complex regulatory requirements strained that company's resources and overwhelmed its small staff. "As a result of the foregoing, compliance with timetables for alternate fuel economy petitions in the early 1980's was not monitored as closely as in the past and as closely as (OAM) and MAI would have preferred."

Maserati also stated that in September 1987, the fact that MAI had to pay attention to fuel economy was brought to MAI management. Because emphasis was placed on "resolving

serious financial and sales problems" resources were not devoted to preparing the fuel economy petitions until March, 1988 when a fact finding trip to Italy was approved. It was during this trip, however, that compliance problems with standard 208 (49 CFR 571.208) were discovered, and resources in both Italy and the United States were devoted to this.

Maserati also stated that its noncomputerized records and small staff made assembling needed information in timely fashion difficult. For example, there is no Italian counterpart to the U.S. concept of "model year" and they had to obtain data by U.S. model year. Maserati also asserted that, "Communication problems between OAM and MAI hindered the swift and efficient exchange of information."

NHTSA does not consider either general business difficulties or efforts to comply with other regulatory requirements to constitute good cause for failure to file a timely petition for exemption. Significant resources are not necessary to prepare a petition. Further, if sufficient in-house time or expertise are unavailable, outside companies can be hired to assist in preparing the petition. For example, Maserati itself has previously hired Olson Engineering to prepare its petitions.

The agency notes that business difficulties might constitute good cause for submitting a late petition if such difficulties were directly related to the need to submit a petition. For example, if a company did not file a timely petition because it expected to be out of business for the model year in question, and circumstances unexpectedly changed, the need to submit a petition may have been unforeseeable. Another possible example would be if a low volume manufacturer expected to comply with the generally applicable standard and its fuel economy unexpectedly dropped because the company supplying its engines went out of business. In such a situation, the need to submit a petition may have been unforeseeable. Maserati's petitions do not state any facts which suggest that its need to submit petitions for MYs 1986–91 was unforeseeable at a time 24 months in advance of each model year.

Maserati also attempted to draw an analogy between its situation and that of Ferrari's late filing of petitions for alternate standards for MYs 1986 through 1988, arguing that NHTSA had excused Ferrari's late filing so the agency should similarly treat Maserati. The agency notes that Ferrari's petitions were untimely only for MY's 1986–87.

NHTSA does not consider Ferrari's situation to be relevant to that of Maserati. When Ferrari originally applied for a low volume exemption in 1977, the agency determined that Ferrari was ineligible because Fiat (a large European auto manufacturer) had a 50 percent ownership interest in Ferrari. Fiat withdrew from the U.S. market at the end of the 1982 model year, although it remained a large European auto manufacturer, and Ferrari asked NHTSA in November 1984 to change its previous opinion. The agency sent an interpretation to Ferrari in February 1985, stating that it agreed that Ferrari was now eligible to apply for a low volume exemption. As was stated in the Federal Register notice of December 10, 1986 (51 FR 44492, since Ferrari learned of this decision in February of 1985, it could not have filed a petition for the 1986 and 1987 model years 24 months in advance of those model years. By contrast, not questions have been raised about Maserati's eligibility for MYs 1986–91 low volume exemptions, other than the question of timeliness raised by the April 1989 submission of the petitions.

Maserati also argued that its late filing is entirely unrelated to the level of the standard requested. According to Maserati, there is very little flexibility in its CAFE capabilities, and it did not purposely delay filing in order to put the agency in a position of approving a *fait accompli* at levels which fall short of its maximum feasible fuel economy. This argument addresses the significance of the lateness of the petition rather than whether there was "good cause" for the late submission. Maserati concedes that its petition was untimely. The issue which is determinative of whether NHTSA wil accept a late petition is not, as Maserati seems to imply, whether there would have been an unfair advantage to the manufacturer if the agency accepted the late petition. Instead, the issue is whether there is "good cause" for the manufacturer's late filing.

In sum, NHTSA has carefully considered the arguments presented by Maserati but has concluded that Maserati has not shown "good cause" for its late filing of petitions for low volume exemptions for MYs 1986, 1987, and 1989 through 1991.

(15 U.S.C. 2002; delegation of authority at 49 CFR 1.40 and 501.8)

Issued on: June 19, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90–14538 Filed 6–21–90; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel; Closed Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of closed meeting of Art Advisory Panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, DC.

DATE: The meeting will be held July 9, 1990.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, CC:AP:AS:4 901 D Street, SW., Washington, DC 20024, Telephone No. (202) 252–8128, (not a toll free number).

Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a closed meeting of the Art Advisory Panel will be held on July 9, 1990 in Room 224 beginning at 9:30 a.m., Aerospace Center Building, 901 D Street, SW., Washington, DC 20024.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of section 6103 of title 26 of the United States Code.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c) (3), (4), (6), and (7) of title 5 of the United States Code, and that the meeting will not be open to the public.

The Commissioner of Internal Revenue has determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Fred T. Goldberg, Jr.,

Commissioner.

[FR Doc. 90–14429 Filed 6–21–90; 8:45 am]

BILLING CODE 4830–01–M

Tax on Certain Imported Substances; Determination

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces a determination, under Notice 89–61, 1989–1 C.B. 717, that the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code will be modified to include *butyl acrylate, methyl acrylate, ethyl acrylate,* and *2-ethylhexyl acrylate.*

EFFECTIVE DATE: This modification is effective as of July 1, 1990.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries), 202–566–4475 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 4672(a) of the Internal Revenue Code, an importer or exporter of any substance may request that the Secretary determine whether such substance should be listed as a taxable substance. The Secretary shall add such substance to the list of taxable substances in section 4672(a)(3) if the Secretary determines that taxable chemicals constitute more than 50 percent of the weight, or more than 50 percent of the value, of the materials used to produced such substance. This determination is to be made on the basis of the predominant method of production. Notice 89–61, 1989–1 C.B. 717, sets forth the rules relating to the determination process.

Determination

On March 5, 1990, the Secretary determined that butyl acrylate, methyl acrylate, ethyl acrylate, and 2-ethylhexyl acrylate should be added to the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code, effective as of July 1, 1990.

The petitions to add butyl acrylate, methyl acrylate, ethyl acrylate, and 2-ethylhexyl acrylate were submitted by Hoechst Celanese, a manufacturer and exporter of these substances. No material comments were received on these petitions.

Butyl Acrylate

Butyl acrylate has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 67.6 percent by weight of the materials used in its production.

HTS number: 2916.12.50.30
Schedule B number: 2916.12.5030
CAS number: 141–32–2

Butyl acrylate, a liquid, is derived from the taxable chemicals *propylene* and *methane.* The predominant method of producing butyl acrylate is by esterification of arcylic acid with butanol. Acrylic acid is produced by oxidation of propylene. Butanol is produced from propylene using the vapor phase technology.

The stoichiometric material consumption formula for this substance is:

$$2\,C_3H_6\ \underset{\text{propylene}}{} + 1.5\,O_2\ \underset{\text{oxygen}}{} + CH_4\ \underset{\text{methane}}{} \rightarrow CH_2CHCOOC_4H_9\ \underset{\text{butyl acrylate}}{} + H_2\ \underset{\text{hydrogen}}{} + H_2O\ \underset{\text{water}}{}$$

The rate of tax prescribed for this substance, under section 4671(b)(3), is $4.38 per ton. This is based upon a conversion factor for propylene of 0.7841 and a conversion factor for methane of 0.162.

Methyl Acrylate

Methyl acrylate has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 54.7 percent by weight of the materials used in its production.

HTS number: 2916.12.50.20
Schedule B number: 2916.12.5020
CAS number: 96–33–3

Methyl acrylate, a liquid, is derived from the taxable chemicals *propylene* and *methane.* The predominant method of producing methyl acrylate is by esterification of acrylic acid with methanol. Acrylic acid is produced by oxidation of propylene. Methanol is obtained by steam reforming natural gas.

The stoichiometric material consumption formula for this substance is:

$$C_3H_6\ \underset{\text{propylene}}{} + 1.5\,O_2\ \underset{\text{oxygen}}{} + CH_4\ \underset{\text{methane}}{} \rightarrow CH_2CHCOOCH_3\ \underset{\text{methyl acrylate}}{} + H_2\ \underset{\text{hydrogen}}{} + H_2O\ \underset{\text{water}}{}$$

The rate of tax prescribed for this substance, under section 4671(b)(3), is $4.29 per ton. This is based upon a conversion factor for propylene of 0.5534 and a conversion factor for methane of 0.463.

Ethyl Acrylate

Ethyl acrylate has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 59.3 percent by weight of the materials used in its production.

HTS number: 2916.12.50.10
Schedule B number: 2916.12.5010
CAS number: 140–88–5

Ethyl acrylate, a liquid, is derived from the taxable chemicals *propylene* and *ethylene.* The predominant method of producing ethyl acrylate is by esterification of acrylic acid with ethanol. Acrylic acid is producted by oxidation of propylene. Ethanol is produced from ethylene.

The stoichiometric material consumption formula for this substance is:

$$C_3H_6\ \underset{\text{propylene}}{} + 1.5\,O_2\ \underset{\text{oxygen}}{} + C_2H_4\ \underset{\text{ethylene}}{} \rightarrow CH_2CHCOOCH_2CH_3\ \underset{\text{ethyl acrylate}}{} + H_2O\ \underset{\text{water}}{}$$

The rate of tax prescribed for this substance, under section 4671(b)(3), is $3.85 per ton. This is based upon a conversion factor for propylene of 0.4861 and a conversion factor for ethylene of 0.3039.

2-Ethylhexyl Acrylate

2-ethylhexyl acrylate has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 76.7 percent by weight of the materials used in its production.

HTS number: 2916.12.50.40
Schedule B number: 2916.12.5040
CAS number: 103–11–7

2-ethylhexyl acrylate, a liquid, is derived from the taxable chemicals *propylene* and *methane*. The predominant method of producing 2-ethylhexyl acrylate is by direct esterification of acrylic acid with 2-ethylhexanol in the presence of sulfuric acid. Acrylic acid is obtained from propylene by two stage oxidation. 2-ethylhexanol is produced from propylene, using n-butyraldehyde as an intermediary.

The stoichiometric material consumption formula for this substance is:

$$3\ C_3H_6\ (\text{propylene}) + 1.5\ O_2\ (\text{oxygen}) + 2\ CH_4\ (\text{methane}) \rightarrow CH_2CHCOOCH_2CHC_2H_5C_4H_9\ (\text{2-ethylhexyl acrylate}) + H_2O\ (\text{water}) + 2\ H_2\ (\text{hydrogen})$$

The rate of tax prescribed for this substance, under section 4671(b)(3), is $5.08 per ton. This is based upon a conversion factor for propylene of 0.8741 and a conversion factor for methane of 0.2376.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 90–14430 Filed 6–21–90; 8:45 am]

BILLING CODE 4830–01–M

Tax on Certain Imported Substances; Determination

AGENCY: International Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces a determination, under Notice 89–61, 1989–1 C.B. 717, that the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code will be modified to include *vinyl acetate, normal propyl acetate, isopropyl acetate, normal butyl acetate,* and *isobutyl acetate.*

EFFECTIVE DATE: This modification is effective as of July 1, 1990.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries), 202–566–4475 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 4672(a) of the Internal Revenue Code, an importer or exporter of any substance may request that the Secretary determine whether such substance should be listed as a taxable substance. The Secretary shall add such substance to the list of taxable substances in section 4672(a)(3) if the Secretary determines that taxable chemicals constitute more than 50 percent of the weight, or more than 50 percent of the value, of the materials used to produce such substance. This determination is to be made on the basis of the predominant method of production. Notice 89–61, 1989–1 C.B. 717, sets forth the rules relating to the determination process.

Determination

On March 5, 1990, the Secretary determined that vinyl acetate, normal propyl acetate, isopropyl acetate, normal butyl acetate, and isobutyl acetate should be added to the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code, effective as of July 1, 1990.

The petitions to add vinyl acetate, normal propyl acetate, isopropyl acetate, normal butyl acetate, and isobutyl acetate were submitted by Hoechst Celanese, a manufacturer and exporter of these substances. No material comments were received on these petitions.

Vinyl Acetate

Vinyl acetate has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 63.8 percent by weight of the materials used in its production.

HTS number: 2915.32.00
Schedule B number: 2915.32.0000
CAS number: 108–05–4

Vinyl acetate, a liquid, is derived from the taxable chemicals *ethylene* and *methane*. The predominant method of producing vinyl acetate is by oxyacetylation of ethylene with oxygen and acetic acid. Acetic acid is made by carbonylation of methanol.

The stoichiometric material consumption formula for this substance is:

$$C_2H_4\ (\text{ethylene}) + 2\ CH_4\ (\text{methane}) + H_2O\ (\text{water}) + \tfrac{1}{2}\ O_2\ (\text{oxygen}) \rightarrow CH_3COOHCH_2\ (\text{vinyl acetate}) + 4\ H_2\ (\text{hydrogen})$$

The rate of tax prescribed for this substance, under section 4671(b)(3), is $2.72 per ton. This is based upon a conversion factor for ethylene of 0.3669 and a conversion factor for methane of 0.2695.

Normal Propyl Acetate

Normal propyl acetate has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 67.9 percent by weight of the materials used in its production.

HTS number: 2915.39.45.10
Schedule B number: 2915.39.4510
CAS number: 109–60–4

Normal propyl acetate, a liquid, is derived from the taxable chemicals *ethylene* and *methane*. The predominant method of producing normal propyl acetate is by esterifying normal propyl alcohol with acetic acid. Normal propyl alcohol is produced by the hydrogenation of propionaldehyde. Propionaldehyde is produced by the oxo reaction of ethylene with synthesis gas. Acetic acid is made by carbonylation of methanol. Both carbon monoxide and methanol are produced from methane.

The stoichiometric material consumption formula for this substance is:

C_2H_4 ethylene + 3 CH_4 methane + 2 H_2O water → $CH_3COOC_3H_7$ n-propyl acetate + H_2 hydrogen

The rate of tax prescribed for this substance, under section 4671(b)(3), is $2.26 per ton. This is based upon a conversion factor for ethylene of 0.3148 and a conversion factor for methane of 0.2117.

Isopropyl Acetate

Isopropyl acetate has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 67.9 percent by weight of the materials used in its production.

HTS Number: 2915.39.50.00
Schedule B number: 2915.39.6000
CAS number: 108–21–4

Isopropyl acetate, a liquid, is derived from the taxable chemicals *ethylene* and *methane*. The predominant method of producing isopropyl acetate is by esterifying isopropyl alcohol with acetic acid. Isopropyl alcohol is produced by the hydrogeneration of propionaldehyde. Propionaldehyde is produced by the oxo reaction of ethylene with synthesis gas. Acetic acid is made by carbonylation of methanol. Both carbon monoxide and methanol are produced from methane.

The stoichiometric material consumption formula for this substance is:

C_2H_4 ethylene + 3 CH_4 methane + 2 H_2O water → $CH_3COOC_3H_7$ isopropyl acetate + 5 H_2 hydrogen

The rate of tax prescribed for this substance, under section 4671(b)(3), is $2.34 per ton. This is based upon a conversion factor for ethylene of 0.326 and a conversion factor for methane of 0.2173.

Normal Butyl Acetate

Normal butyl acetate has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 71.4 percent by weight of the materials used in its production.

HTS number: 2915.33.00
Schedule B number: 2915.33.0000
CAS number: 123–86–4

Normal butyl acetate, a liquid, is derived from the taxable chemicals *propylene* and *methane*. The predominant method of producing normal butyl acetate is by esterifying normal butyl alcohol with acetic acid. Butyl alcohol is produced by the hydrogeneration of butyraldehyde. Butyraldehyde is produced by the oxo reaction of propylene with synthesis gas. Acetic acid is made by carbonylation of methanol. Both carbon monoxide and methanol are produced from methane.

The stoichiometric material consumption formula for this substance is:

C_3H_6 propylene + 3 CH_4 methane + 2 H_2O water → $CH_3COOC_4H_9$ n-butyl acetate + 5 H_2 hydrogen

The rate of tax prescribed for this substance, under section 4671(b)(3), is $2.72 per ton. This is based upon a conversion factor for propylene of 0.4242 and a conversion factor for methane of 0.1881.

Isobutyl Acetate

Isobutyl acetate has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 71.4 percent by weight of the materials used in its production.

HTS number: 2915.34.00
Schedule B number: 2915.34.0000
CAS number: 110–19–0

Isobutyl acetate, a liquid, is derived from the taxable chemicals *propylene* and *methane*. The predominant method of producing isobutyl acetate is by esterifying isobutyl alcohol with acetic acid. Butyl alcohol is produced by the hydrogenation of butyraldehyde. Butyraldehyde is produced by the oxo reaction of propylene with synthesis gas. Acetic acid is made by carbonylation of methanol. Both carbon monoxide and methanol are produced from methane.

The stoichiometric material consumption formula for this substance is:

C_3H_6 propylene + 3 CH_4 methane + 2 H_2O water → $CH_3COOC_4H_9$ isobutyl acetate + 5 H_2 hydrogen

The rate of tax prescribed for this substance, under section 4671(b)(3), is $2.86 per ton. This is based upon a conversion factor for propylene of 0.4524 and a conversion factor for methane of 0.1920.

Dale D. Goode,
Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 90–14431 Filed 6–21–90; 8:45 am]
BILLING CODE 4830–01–M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 121
Friday, June 22, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER 90–14558.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thrusday, June 28, 1990, 10:00 a.m.

This meeting will be open to the public.

PLACE: 999 E Street, N.W., Washington, DC (Ninth Floor).

THE FOLLOWING ITEM WAS ADDED TO THE AGENDA: 1990 Management Plan Reallocations.

PERSON TO CONTRACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 376–3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 90–14611 Filed 6–20–90; 11:15 am]

BILLING CODE 6715–01–M

Corrections

Federal Register
Vol. 55, No.121
Friday, June 22, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1942

Community Facility Loans and Grants

Correction

In interim rule document 90-7683 beginning on page 12811 in the issue of Friday, April 6, 1990, make the following corrections:

§ 1942.507 [Corrected]

1. On page 12813, in § 1942.507, in paragraph (d)(3)(i), in the first line "quality" should read "quantity".

§ 1942.521 [Corrected]

2. On page 12814, in § 1942.521, in paragraph (d), in the fifth line "state" should read "stage".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 799

[Docket No. 900360-0060]

Imposition of Foreign Policy Controls on Propellant Batch Mixers

Correction

In rule document 90-7788 beginning on page 13121 in the issue of Monday, April 9, 1990, make the following corrections:

On page 13123, in the first column:

1. The second part heading should read **PART 799-[AMENDED]**;

2. The headings to amendatory instructions 5 and 6 should read **SUPPLEMENT NO. 1 TO § 799.1-[AMENDED]**; and

3. In amendatory instructions 5 and 6, in the first lines "§ 779.1" should read "§ 799.1".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER90-404-000, et al.]

Georgia Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Correction

In notice document 90-13880 beginning on page 24299 in the issue of Friday, June 15, 1990, make the following correction:

On page 24300, in the first column, the second line should read "[Docket No. ER90-443-000]".

BILLING CODE 1505-01-D

FARM CREDIT ADMINISTRATION

12 CFR Parts 613, 614, 615, 616, 618, and 619

RIN 3052-AA94

Eligibility and Scope of Financing; Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Coordination; General Provisions; Definitions

Correction

In rule document 90-13862 beginning on page 24861 in the issue of Tuesday, June 19, 1990, make the following correction:

On page 24862, in the first column, beginning in the third line, the **DATES** paragraph should read as follows:

"**DATES:** These regulations shall become effective upon the expiration of 30 days after this publication during which either or both Houses of Congress are in session. Notice of the effective date will be published in the **Federal Register**."

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 431

[BQC-21-FC]

RIN 0938-AB85

Medicaid Program; Medical Eligibility Quality Control (MEQC) Program Requirements

Correction

In rule document 90-12247 beginning on page 22142 in the issue of Thursday, May 31, 1990, make the following corrections:

1. On page 22145, in the first column, in the fourth line, "Medicare" should read "Medicaid".

2. On page 22147, in the first column, in the first complete paragraph, in the sixth line, "to MAO stratum" should read "the MAO stratum".

3. On the same page, in the same column, in the ninth from last line, "weighting" was misspelled.

4. On page 22149, in the first column, in the first complete paragraph, in the 14th line, "110 percent" should read "100 percent".

5. On page 22151, in the third column, in the third paragraph, in the first line, "§ 431.816(d)" should read "§ 431.812(d)".

6. On page 22163, in the second column, in the second paragraph, in the fifth from last line, "just" should read "must".

7. On the same page,in the same column, in the 10th from last line, "not" should read "now".

8. On page 22164, in the first column, in the last paragraph, in the 20th line, "in correct" should read "is correct".

9. On page 22173, in the third column, immediately above the first signature, the date should read "August 15, 1989" and immediately above the second signature insert "Approved: February 6, 1990."

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 434

[BPD-306-F]

RIN 0938-AB54

Waiver of Certain Membership Requirements for Certain Health Maintenance Organizations (HMOs), and State Option for Disenrollment Restrictions for Certain HMOs Under Medicaid

Correction

In rule document 90-13543 beginning on page 23738, in the issue of Tuesday, June 12, 1990, make the following correction:

On page 23744, in the second column, in amendatory instruction 3., in the third line, "(b)(3) and" should read "(b)(3) as".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 170

RIN 3150-AD23

Revision of Fee Schedules: Radioisotope Licenses and Topical Reports

Correction

In rule document 90-11955 beginning on page 21173 in the issue of Wednesday, May 23, 1990, make the following correction:

On page 21182, in the first column, in § 170.31, in the table, the first three lines of entry "N" should read as follows:

N. Licenses that authorize services for other licensees, except (1) licenses that authorize calibration * * *.

Note: In the correction to this document published at 55 FR 23836, June 12, 1990, item five should be disregarded.

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

Power Reactor Local Public Document Rooms to Receive Documents on Microfiche Rather Than in Paper Copy

Correction

In notice document 90-12724 appearing on page 22419 in the issue of Friday, June 1, 1990, make the following correction:

In the second column, under **FOR FURTHER INFORMATION CONTACT**, in the last line the toll-free telephone number should read "800-638-8081".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 90-09; Notice 01]

RIN 2127-AC55

Federal Motor Vehicle Safety Satndards: Brake Hoses

Correction

In proposed rule document 90-13953 beginning on page 24278 in the issue of Friday, June 15, 1990, in the first column, under **DATES**, "July 16, 1990" should read "30 days after publication of the final rule in the Federal Register".

BILLING CODE 1505-01-D

federal register

Friday
June 22, 1990

Part II

Department of Education

34 Part 303

Early Intervention Program for Infants and Toddlers With Handicaps; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 303

RIN 1820-AA49

Early Intervention Program for Infants and Toddlers With Handicaps

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends 34 CFR part 303 to add an Office of Management and Budget (OMB) control number to one section of the regulations. This section contains information collection requirements approved by OMB. The Secretary takes this action to inform the public that these requirements have been approved.

EFFECTIVE DATE: These regulations are effective June 22, 1990.

FOR FURTHER INFORMATION CONTACT: Thomas B. Irwin, Office of Special Education Programs, U.S. Department of Education (Mary E. Switzer Building, Room 4618), 400 Maryland Avenue SW., Washington, DC 20202-7240, Telephone: (202) 732-1114.

SUPPLEMENTARY INFORMATION: On June 22, 1989, final regulations implementing the 1986 Amendments to the Education of the Handicapped Act (EHA) were published in the **Federal Register** (54 FR 26306-26348). The effective date of certain sections of these regulations was delayed until information collection requirements contained in those sections were approved by OMB under the Paperwork Reduction Act of 1980, as amended. OMB has now approved the information collection requirements for this section.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the publication of OMB control numbers is purely technical and does not establish substantive policy. Therefore, the Secretary has determined, under 5 U.S.C. 553(b)(B), that proposed rulemaking is unnecessary and contrary to the public interest.

List of Subjects in 34 CFR Part 303

Education, Education of the handicapped, Grant Programs—education, Medical personnel, State educational agencies.

(Catalog of Federal Domestic Assistance Number 84.181; Early Intervention Program for Infants and Toddlers with Handicaps)

Dated: June 18, 1990.

Lauro F. Cavazos,

Secretary of Education.

The Secretary amends part 303 of title 34 of the Code of Federal Regulations as follows:

PART 303—EARLY INTERVENTION PROGRAM FOR INFANTS AND TODDLERS WITH HANDICAPS

1. The authority citation for part 303 continues to read as follows:

Authority: 20 U.S.C. 1471-1485, unless otherwise noted.

§ 303.653 [Amended]

2. Section 303.653 is amended by adding "(Approved by the Office of Management and Budget under control number 1820-0578)" following that section.

[FR Doc. 90-14450 Filed 6-21-90; 8:45 am]

BILLING CODE 4000-01-M

federal register

Friday
June 22, 1990

Part III

Department of Education

Pell Grant Program; Publication of the 1990–91 Award Year Zero Pell Grant Index (PGI) Charts; Notice

DEPARTMENT OF EDUCATION

Pell Grant Program

AGENCY: Department of Education.

ACTION: Publication of the 1990–91 Award Year Zero Pell Grant Index (PGI) Charts.

SUMMARY: The Secretary publishes the Zero Pell Grant Index (PGI) Charts for institutions to use when verifying application information under the Pell Grant Program. The use of the Zero PGI Charts is authorized by § 668.59(a)(2) of the Student Assistance General Provisions regulations.

SUPPLEMENTARY INFORMATION: The Pell Grant Program provides grant assistance to financially needy students to help them meet the cost of postsecondary education. In order to receive a Pell Grant, a student must submit an application to the Secretary that contains both financial and non-financial information which permits the Secretary to determine the student's expected family contribution (EFC). The EFC is an amount which the student and his or her family may reasonably be expected to contribute toward the student's cost of a postsecondary education. The EFC is now called the Pell Grant Index, or PGI; this index was previously called the Student Aid Index (SAI). Therefore, the Notice of Zero SAI Charts is renamed the Notice of Zero PGI Charts for the Pell Grant Program.

The Secretary notifies the student of his or her PGI on a document called a Student Aid Report (SAR). On the SAR, the Secretary also includes the information reported by the applicant on the application. The Secretary uses some of this information to calculate the student's PGI.

In order to assure that applicants for Pell Grants provide accurate information on their applications, the Secretary may require some applicants to verify and update the information submitted on the applications. The regulations governing this verification process are in the Student Assistance General Provisions regulations, 34 CFR part 668, subpart E. Generally, under these regulations, if an applicant is required to change any of the information on his or her application, the applicant must make the changes on the SAR that he or she received and must resubmit that revised SAR to the Secretary.

However, there are some circumstances where the changed application information will not change the student's PGI, and, under those circumstances, the Secretary does not require the applicant to resubmit the SAR. Under § 668.59(a)(2) of the Student Assistance General Provisions regulations, the Secretary does not require an applicant to resubmit the changed SAR to the Secretary if the applicant has a PGI of zero and the institution that the applicant is attending can determine that the applicant's PGI will remain at zero using verified information and the Zero PGI Charts.

The Zero PGI Charts are a simplified version of the formula the Secretary uses in calculating an applicant's PGI. The charts may be used only if:

- The applicant's dependency status does not change, and
- The applicant's (spouse's) income and assets and the parental income and assets of a dependent student do not exceed specified amounts.

An institution may use the Zero PGI Charts to calculate a Pell Grant applicant's PGI if the following criteria are satisfied. (These criteria are based upon sections 411A through 411F of the Higher Education Act of 1965, as amended (HEA).)

For Students Qualified To Use the Simplified Needs Test

1. The effective income of a single dependent student is less than $3,801 in calendar year 1989.
2. The effective income of a married dependent student and spouse is less than $5,501 in calendar year 1989.
3. The effective family income of an unmarried independent student without dependent children is less than $5,701 in calendar year 1989.
4. The effective family income of a married independent student without dependents is less than $7,201 in calendar year 1989, if the student does not qualify to use the full employment expense offset (EEO), or the effective family income is less than $8,701 if the student is qualified to use the full EEO.
5. The effective family income of an independent student with one dependent (other than a spouse) is less than $8,701 in calendar year 1989.

For Dependent Students[1] Using the Regular Needs Test

1. The effective income of a single dependent student is less than $3,801.
2. The effective income of a married dependent student is less than $5,501.
3. Dependent student and spouse net assets equal zero.[2]
4. Net home assets of parents are less than $30,001.[2]
5. Net business assets (exclusive of farm assets) of parents are less than $80,001.
6. Net farm (or a combination of net farm and net business assets) of parents are less than $100,001.
7. Net parental assets, other than home, farm, or business assets are less than $25,001.
8. Combined net parental business, home, and other assets (exclusive of farm assets) are less than $110,001.[2]
9. Combined net parental farm, business, home, and other assets are less than $130,001.[2]

For Independent Students[3] Using the Regular Needs Test

1. The effective family income of an unmarried independent student without dependent children is less than $5,701.
2. The effective family income of a married independent student without dependents is less than $7,201, if the student is not qualified to use the full EEO, or the effective family income is less than $8,701 if the student is qualified to use the full EEO.
3. The effective family income of an independent student with one dependent (other than a spouse) is less than $8,701.
4. The assets of an unmarried independent student without dependent children are equal to zero.[4]
5. Net home assets of an unmarried independent student with a dependent, or a married independent student without dependents, or a married independent student with dependents other than the spouse are less than $30,001.[4]
6. Net business assets (exclusive of farm assets) are less than $80,001.
7. Net farm assets (or a combination of net farm and net business assets) are less than $100,001.
8. The net value of assets, other than home, farm, or business assets is less than $25,001.
9. Combined net business, home, and other assets (exclusive of farm assets) are less than $110,001.[4]

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[1] If a student, the student's spouse or parent(s) is a dislocated worker as defined in title III of the Job Training Partnership Act, use calendar year 1990 expected year income. For all others use income received during calendar year 1989.

[2] If a student, student's spouse or parent is a dislocated worker as defined in title III of the Job Training Partnership Act, or displaced homemaker as defined in section 480(e) of the HEA, the net asset value of a principal residence shall be considered zero.

[3] If a student or the student's spouse is a dislocated worker as defined in title III of the Job Partnership Training Act, use calendar year 1990 expected income. For all other students, use income received in calendar year 1989.

[4] If a student or the student's spouse is a dislocated worker as defined in title III of the Job Partnership Training Act, or a displaced homemaker as defined in section 480(e) of the HEA, the net asset value of a principal residence shall be considered zero.

10. Combined net farm, business, home, and other assets are less than $130,001.[4]

Zero PGI—Chart A

Use if applicant is eligible for full employment expense offset (EEO).[1]

An applicant's PGI is zero if:

The correct household size is:	And the verified effective family income (EFI) is less than:
2	$8,701
3	10,301
4	12,801
5	14,901
6	16,401
7	18,201
8	20,001
9	21,801
10	23,601
11	25,401
12	27,201
13	29,001
14	30,801

Zero PGI—Chart B

Use if applicant is not eligible for full employment expense offset (EEO).[2]

An applicant's PGI is zero if:

The correct household size is:	And the verified effective family income (EFI) is less than:
1	$5,701
2	7,201
3	8,801
4	11,301
5	13,401
6	14,901
7	16,701
8	18,501
9	20,301
10	22,101
11	23,901
12	25,701
13	27,501
14	29,301

[1] Use chart A if—

For a dependent student:

(1) The parents of the student are married and both parents earned income of $3,000 or more; or

(2) The parent of the student qualified as a head of household for Federal income tax purposes and the parent earned income of $3,000 or more.

For an independent student with dependents:

(1) Both the student and the spouse earned income of $3,000 or more; or

(2) The student qualified as a head of household for Federal income tax purposes and the student earned income of $3,000 or more.

[2] Use this chart if you cannot use Chart A.

Effective Family Income (EFI)

Effective family income equals total income minus the sum of (1) Federal income taxes paid or payable, (2) the tax allowance calculated under the Tax Allowance Percentage Table included in this Notice, and (3) excludable income, as defined below.

Effective Income (EI)

Effective income equals the adjusted gross income of the student (and spouse) reported in the U.S. income tax return of the preceding award year, or income earned from work not reported on a U.S. income tax return in the case of non-tax filers and, the total untaxed income and benefits minus (1) Any excludable income and (2) the amount of U.S. income tax paid or payable.

Total income equals the adjusted gross income (determined for tax filers from the U.S income tax return or income earned from work not reported on a U.S. income tax return in the case of non-tax filers), the total untaxed income and benefits of the student's parents for a dependent student, or of the student and spouse for an independent student, and one-half of the student's Veterans Administration (VA) educational benefits (under chapters 34 and 35 of title 38 of the United States Code).

Excludable Income

Excludable income includes:

- For a Native American student, individual payments of $2000 or less received by the Student (and spouse and the student's parents) under the Per Capita or Distribution of Judgement Funds Act, or any income received under the Alaska Native Claims Settlement Act or the Maine Indian Claims Settlement Act.
- Income of a divorced or separated spouse of a student, or of a student's spouse who has died.
- Student financial assistance, except certain veterans' or social security benefits.
- Unemployment compensation received by a dislocated worker in accordance with Title III of the Job Training Partnership Act.
- Income or capital gains from the sale of a farm or business assets of the family, if the sale resulted from a voluntary or involuntary foreclosure, forfeiture, bankruptcy or involuntary liquidation.

TAX ALLOWANCE PERCENTAGE TABLE

If state, or territory of residence is:	And total income is:	
	Less than $15,000	or $15,000 or more
	Then the percentage is:	
Alabama	.07	.06
Alaska	.03	.02
American Samoa	.04	.03
Arizona	.07	.06
Arkansas	.07	.06
California	.09	.08
Canada	.09	.08
Colorado	.08	.07
Connecticut	.08	.07
Delaware	.09	.08
District of Columbia	.11	.10
Federated Sates of Micronesia	.04	.03
Florida	.05	.04
Georgia	.08	.07
Guam	.04	.03
Hawaii	.11	.10
Idaho	.09	.08
Illinois	.08	.07
Indiana	.07	.06
Iowa	.09	.08
Kansas	.08	.07
Kentucky	.08	.07
Louisiana	.04	.03
Maine	.10	.09
Marshall Islands	.04	.03
Maryland	.11	.10
Massachusetts	.11	.10
Mexico	.09	.08
Michigan	.12	.11
Minnesota	.12	.11
Mississippi	.07	.06
Missouri	.07	.06
Montana	.07	.06
Nebraska	.09	.08
Nevada	.04	.03
New Hampshire	.07	.06
New Jersey	.10	.09
New Mexico	.05	.04
New York	.14	.13
North Carolina	.09	.09
North Dakota	.06	.05
Northern Mariana Islands	.04	.03
Ohio	.09	.08
Oklahoma	.07	.06
Oregon	.11	.10
Pennsylvania	.09	.08
Puerto Rico	.03	.02
Rhode Island	.11	.10
South Carolina	.09	.08
South Dakota	.05	.04
Tennessee	.05	.04
Texas	.04	.03
Utah	.09	.08
Vermont	.09	.08
Virgin Islands	.04	.03
Virginia	.09	.08
Washington	.06	.05
West Virginia	.07	.06
Wisconsin	.13	.12
Wyoming	.03	.02
Trust Territory of the Pacific Islands (Palau)	.04	.03
Blank or Invalid State	.09	.08

TAX ALLOWANCE PERCENTAGE TABLE—Continued

If state, or territory of residence is:	And total income is:	
	Less than $15,000	or $15,000 or more
Sections 411B, 411C, and 411D of the HEA.		

FOR FURTHER INFORMATION CONTACT: Adara L. Walton, Acting Chief, or Joseph Vettickal, Program Analyst, Verification Development Section, Student Verification Branch, Division of Policy and Program Development, Office of Student Financial Assistance, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue SW., ROB–3, Room 4613, Washington, DC 20202, Telephone: (202) 708–4601.

(Catalog of Federal Domestic Assistance No. 84.063 Pell Grant Program)

(20 U.S.C. 1094)

Dated: June 12, 1990.

[FR Doc. 90–14451 Filed 6–21–90; 8:45 am]

BILLING CODE 4000–01–M

federal register

Friday
June 22, 1990

Part IV

Department of Education

Perkins Loan, College Work-Study, Supplemental Educational Opportunity Grant, Income Contingent Loan, and Stafford Loan Programs; Notice

DEPARTMENT OF EDUCATION

Perkins Loan, College Work-Study, Supplemental Educational Opportunity Grant, Income Contingent Loan, and Stafford Loan (Formerly the Guaranteed Student Loan Programs)

AGENCY: Department of Education.

ACTION: Notice of Procedures for certification of need analysis servicers' systems and notice of closing dates for requesting and returning agreements and transmittal of information.

SUMMARY: The Secretary of Education is informing individuals and organizations that operate need analysis systems (need analysis servicers) of the procedures the Secretary will use to certify need analysis systems for the 1991–92 award year.

FOR FURTHER INFORMATION CONTACT: Edith Bell, Division of Policy and Program Development, Office of Student Financial Assistance, Department of Education, 400 Maryland Avenue, SW., Room 4613, ROB–3, Washington, DC 20202–5346, Telephone (202) 708–4601. For information regarding the specification package contact Rafael Delgado, Telephone (301) 588–5484.

SUPPLEMENTARY INFORMATION:

Program Information

The Perkins Loan, College Work Study, Supplemental Educational Opportunity Grant (known collectively as the campus-based programs) and the Stafford Loan programs are "need based" student financial aid programs. In order to award or approve financial aid under each program, an institution must determine whether a student has financial need. The institution determines a student's financial need by subtracting from the student's educational cost his or her expected family contribution, i.e., the amount the student, his or her spouse and, in the case of a dependent student, his or her parents may reasonably be expected to contribute toward his or her educational costs.

Institutions participating in the Income Contingent Loan (ICL) program must make ICLs reasonably available first to all eligible students who demonstrate financial need.

Part F of Title IV of the Higher Education Act of 1965, as amended, (HEA) provides detailed formulas for determining a student's expected family contribution for the campus-based, ICL and Stafford Loan programs. The statutory formulas specify the criteria, data elements and tables used for determining schedules of expected family contributions for these programs

As authorized by the HEA, and as a service to institutions, the Secretary will certify that an individual's or organization's system has the capability for determining an expected family contribution that is consistent with the calculation prescribed by part F of title IV of the HEA. If an institution uses a certified need analysis system in the calculation of an expected family contribution for 1991–92 under the campus-based, ICL, and Stafford Loan programs, the institution can be assured that the expected family contribution produced by the system will accurately reflect the expected family contribution described in title IV, part F, of the HEA. A need analysis servicer may also agree to incorporate Department of Education (ED) edits, specifications and/or selection criteria for verification as described in § 668.54 of the Student Assistance General Provisions regulations. Need analysis servicers must follow the procedures set forth below to have their systems certified by the Secretary. The Secretary will provide educational institutions with a list of certified systems in May 1991.

Certification Procedural Requirements

In order to have its system certified by the Secretary for the 1991–92 award year, a need analysis servicer must enter into an agreement with the Secretary and follow the procedural steps below:

Step 1: The Secretary automatically sends an agreement package to need analysis servicers certified for the 1990–91 award year. Need analysis servicers that were not certified for the 1990–91 award year must request an agreement package by July 20, 1990. The request must be in writing and either hand-delivered or mailed to the Department of Education, Office of Student Financial Assistance, Division of Policy and Program Development, Student Verification Branch, 400 Maryland Avenue, SW., Room 4613, Regional Office Building 3, Washington, DC 20202–5346.

Step 2: The Secretary provides an agreement package to the need analysis servicer. The agreement package includes the agreement and information that will enable the need analysis servicer to determine whether it wishes its system to become certified and to determine its type of participation.

Step 3: A need analysis servicer selects its participation type by indicating that type on the agreement and returning its signed agreement to ED by August 17, 1990.

Agreements Delivered by Mail

Agreements delivered by mail must be addressed to the Department of Education, Office of Student Financial Assistance Division of Policy and Program Development, Student Verification Branch, 400 Maryland Avenue, SW., (Room 4613, Regional Office Building 3), Washington, DC 20202–5346.

A need analysis servicer must show proof of mailing the agreement. Proof of mailing consists of one of the following: (1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service, (2) a legibly dated U.S. Postal Service postmark, (3) a dated shipping label, invoice, or receipt from a commercial carrier, or (4) any other proof of mailing acceptable to the U.S. Secretary of Education.

If agreements are forwarded using the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. A need analysis servicer should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, confirmation should be obtained from the local post office. A need analysis servicer is encouraged to use certified or, at least, first-class mail.

Agreements Delivered by Hand

Agreements that are hand-delivered must be taken to the Department of Education, Office of Student Financial Assistance, Division of Policy and Program Development, Student Verification Branch, Seventh and D Streets SW. (Room 4613, Regional Office Building 3), Washington, DC 20202–5346.

Hand-delivered agreements will be accepted between 8 a.m. and 4:30 p.m. daily (Washington, DC time), except Saturdays, Sundays, and Federal holidays. Agreements delivered by hand will not be accepted after 4:30 p.m. on the closing date.

Step 4: Following submission of the signed agreement to ED, ED provides the need analysis servicer with the appropriate software development package based on the participation type selected.

Step 5: Test cases and additional information pertaining to the submission of the processed test cases will be transmitted by ED to the need analysis servicer at a date agreed upon between ED and the need analysis servicer. The complexity and number of the test cases depend on the participation type the need analysis servicer has selected. (A test case is a discrete set of hypothetical

applicant data which is used to test the accuracy and adequacy of a computer function and the need analysis servicer's implementation of part F of title IV of the HEA. A single test case may test one or more specific input, process, or output functions. An aggregate of test cases may test a particular computer process, computer run, process cycle, subsystem, or total system process.)

Each set of test cases is designed to provide evidence that will indicate the need analysis servicer's ability to perform accurately operational functions of the participation type selected. ED will evaluate two test case submissions at no charge; a fee of $3,000 will be charged for any additional test case submissions. A need analysis servicer will be given a choice of receiving its test cases by floppy disk or magnetic or cartridge tape.

Note: ED expects that a servicer will thoroughly test its system prior to submitting test cases to ED for evaluation.

Step 6: A need analysis servicer processes all the test cases provided and submits to ED the generated results on floppy disk or magnetic or cartridge tape by March 29, 1991. The need analysis servicer must demonstrate to the satisfication of ED that there were no system deficiencies in those test cases submitted by March 29, 1991. Any discrepancies in the test case results must be resolved to the satisfaction of ED by April 12, 1991 in order for the need analysis servicer's system to be certified and included in the list of certified systems to be provided by the Secretary in May 1991.

Test Case Results Delivered by Mail

Test cases delivered by mail must be addressed to Mr. William Schulte, National Computer Systems, 2510 North Dodge Street, Iowa City, Iowa 52244.

A need analysis servicer must show proof of mailing the test case results. Proof of mailing consists of one of the following: (1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service, (2) a legibly dated U.S. Postal Service postmark, (3) a dated shipped label, invoice, or receipt from a commercial carrier, or (4) any other proof of mailing acceptable to the U.S. Secretary of Education.

If test case results are forwarded using the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. A need analysis servicer should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, confirmation should be obtained from the local post office. A need analysis servicer is encouraged to use certified or, at least, first-class mail.

Test Case Results Delivered by Hand

Test case results that are hand-delivered must be taken to Mr. William Schulte, National Computer Systems, 2510 North Dodge Street, Iowa City, Iowa 52244.

Hand-delivered test case results will be accepted between 8 a.m. and 4 p.m. daily (Iowa City time), except Saturdays, Sundays, and Federal holidays. Test case results delivered by hand will not be accepted after 4 p.m. on the closing date.

Closing Dates

1. Deadline date to request agreement package—July 20, 1990.
2. Deadline date to submit agreement to ED—August 17, 1990.
3. Deadline date to submit test case results to ED—March 29, 1991.
4. Deadline date to resolve test case results—April 12, 1991.

(Catalog of Federal Domestic Assistance No. 84.038, Perkins Loan Program (formerly National Direct Student Loan); 84.038, Income Contingent Loan Program; 84.226, College Work-Study Program; 84.007, Supplemental Educational Opportunity Grant Program; and 84.032, Stafford Loan Program (formerly Guaranteed Student Loan))

Dated: June 12, 1990.

Leonard L. Haynes III,

Assistant Secretary for Postsecondary Education.

[FR Doc. 90-14449 Filed 6-21-90; 8:45 am]

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federal register

Friday
June 22, 1990

Part V

Department of Education

National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Awards Under the Demonstration Projects for National Significance Program in Technology-Related Assistance for Individuals With Disabilities for Fiscal Year 1990; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84-231]

National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Awards Under the Demonstration and Innovation Projects of National Significance Program in Technology-Related Assistance for Individuals With Disabilities for Fiscal Year 1990

Agency: Department of Education.

Purpose of Program: This program provides financial assistance to nonprofit and for-profit entities to establish demonstration and innovation projects in three categories relevant to technology-related assistance for individuals with disabilities. The three categories are: model delivery projects, model research and demonstration projects, and income-contingent direct loan demonstration projects.

Deadline for Transmittal of Applications: August 6, 1990.

Applications Available: June 25, 1990.

Note: The Department of Education is not bound by any estimates in this notice, except as otherwise provided by statute.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, 82, and 85, and (b) when effective after adoption in final, the proposed regulations for this program published in the **Federal Register** on April 16, 1990, at 55 FR 14220.

It is the policy of the Department of Education not to solicit applications before the publication of final regulations. However, in this case, it is essential to solicit applications on the basis of the notice of proposed rulemaking (NPRM) for this program because the Department must initiate the request for applications at this time in order for awards to be made in fiscal year 1990. However, the Secretary has carefully considered public comments on the NPRM, and expects to make some changes in the final regulations.

The Secretary expects to change the weights and points accorded to two of the selection criteria in § 346.31 in the final regulations. The weights and points that the Secretary expects to assign to each of the selection criteria in § 346.31 are as follows: Importance and innovativeness: Weight 4/Points 20; Goals and objectives: Weight 3/Points 15; Plan of activities: Weight 4/Points 20; Management plan: Weight 2/Points 10; Involvement of individuals with disabilities: Weight 4/Points 20; and Evaluation plan: Weight 3/Points 15.

Also on the basis of public comment, the Secretary expects to clarify the introductory wording in §§ 346.32(d) and 346.33(b)(4) to read, "The project includes substantive roles for individuals with disabilities, or their families or representatives in —", which is identical to the wording in § 346.31(e).

The comments received by the Secretary did not raise any other significant policy issues with respect to the proposed regulations. Applicants should prepare their applications based on the NPRM with the above modifications to the weights and points assigned to each of the two criteria, and the above clarification in wording. The Secretary does not expect to make further changes in the final regulations that would affect applicants for funds. If any other changes are made in the final regulations for this program, applicants will be given an opportunity to amend or resubmit their applications.

Program type	Priorities	No. of awards	Average award	Project period (months)
Model delivery projects	Demonstrations of the use of peers with disabilities * * * § 346.11(a)(1)(iii).	2	$125,000	36
	Models to provide technology-related assistance for employment § 346.11(a)(1)(vi).	2	125,000	36
	Model projects using technology to facilitate access * * * to direct support services § 346.11(a)(1)(xxi).	2	125,000	36
Research and development	The adaptation of technology developed for the population without disabilities to meet the specialized needs of individuals with disabilities § 346.11(a)(2)(iii).	1	150,000	36
	The development of devices to enhance transportation for individuals with disabilities § 346.11(a)(2)(xix).	1	150,000	36
Income-contingent direct loan demonstrations	The viability of loans made for the lease or purchase of technology-related assistance for work-related purposes § 346.11(a)(3)(iii).	1	150,000	24
	The viability of loans made for adults, children, or elderly individuals with disabilities § 345.11(a)(3)(iv).	1	150,000	24
	Methods to assess individuals with disabilities * * * as candidates for loans § 346.11(a)(3)(xi).	1	150,000	24

For Applications Contact: National Institute on Disability and Rehabilitation Research, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202-2601, Attention: Peer Review Unit. Telephone: (202) 732-1207; deaf and hearing-impaired individuals may call (202) 732-5316 for TDD services.

For Further Information Contact: Carol Cohen, National Institute on Disability and Rehabilitation Research, (202) 732-5066.

Program Authority: 29 U.S.C. 2201-2271.

Dated: June 18, 1990.

Michael E. Vader,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 90-14516 Filed 6-19-90; 1:37 pm]

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federal register

Friday,
June 22, 1990

Part VI

Department of Health and Human Services

Office of Human Development Services

The Abandoned Infants Assistance Program; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

[Program Announcement No. 13551-901]

Abandoned Infants Assistance Program

AGENCY: Administration for Children, Youth and Families (ACYF), Office of Human Development Services (OHDS), HHS.

ACTION: Announcement of the availability of financial assistance and request for applications to carry out demonstration projects to provide comprehensive services to abandoned infants and their families.

SUMMARY: The Children's Bureau of the Administration for Children, Youth and Families announces the availability of funds to carry out demonstration projects to prevent the abandonment in hospitals of infants and young children, specifically drug-exposed children and those with acquired immune deficiency syndrome (AIDS); and to develop, implement, and operate a comprehensive services program to address the needs of these children and their families.

DATES: The closing date for receipt of applications is August 21, 1990.

ADDRESSES: Applications should be sent to: Abandoned Infants Assistance Program, Office of Human Development Services, Grants and Contracts Management Division, HDS/OMS, Hubert H. Humphrey Building, Room 341-F, 200 Independence Avenue, SW., Washington, DC 20201, Attention: Margaret Tolson.

FOR FURTHER INFORMATION CONTACT: Cecelia E. Sudia, (202) 245-0764.

SUPPLEMENTARY INFORMATION:

Part I: General Information

A. Background

Public Law (P.L.) 100-505, the "Abandoned Infants Assistance Act of 1988," (42 U.S.C. 670 note) (the Act) was signed into law on October 18, 1988. The purposes of the Act are to establish a program of demonstration projects to prevent the abandonment in hospitals of infants and young children, particularly those who have been exposed to drugs and those with AIDS; to identify and address the needs of those children who are, or might be, abandoned; to develop a program of comprehensive services for these children and their families including foster family care services, case management services, family support services, respite and crisis intervention services, counseling services and group residential home services; and to recruit and train health and social services personnel, foster care families, and residential care providers to meet the needs of abandoned children. In addition, the Secretary is required to carry out evaluation studies, submit reports to Congress and may provide technical assistance and training programs to support the planning, development and operation of the demonstration projects.

Definition: The term "abandoned infants and young children" means infants and young children who are medically cleared for discharge from a hospital setting, but who remain hospitalized because of a lack of appropriate out-of-hospital placement alternatives. (42 U.S.C. 670 note, title I, section 103.)

B. Eligible Applicants

Public and nonprofit private entities.

C. Availability and Allocation of Funds

Total combined funding for fiscal year 1990 competitive grants and contracts under section 101 of the Act (42 U.S.C. 670 note), is $8,367,000.

The Office of Human Development Services proposes to award approximately 40 grants in amounts ranging from $50,000 to $450,000 depending on the priority area.

Applications under this announcement will be considered for:

- *Model Service Projects*—to organize or augment a comprehensive services program to meet the needs of abandoned infants and young children, or those who are at risk of abandonment, and their families, and to evaluate the program.
- *Training Projects*—to recruit and train health and social service personnel, foster and biological parents and relative caregivers, and residential care providers who are providing or will provide care for abandoned infants and young children, or those at risk of abandonment, and their families.
- *Resource Development and Coordination Projects*—to assist States and localities to identify and coordinate existing funding sources and human resources to address the prevention of abandonment and to bring about optimal availability and utilization of services for abandoned infants and young children.

All applicants funded under this announcement will be required to cooperate with technical assistance efforts and provide information for special studies or evaluations funded by the Administration for Children, Youth and Families (ACYF).

All applicants are also required to provide assurances that they will comply with fiscal and program reporting requirements. These required assurances are listed later in this program announcement.

D. Statement of the Problem

Increasing numbers of infants and young children are being infected with HIV and exposed to drugs during their prenatal development. In particular, concern is mounting that an increasing number of women are using illicit drugs and alcohol during pregnancy with adverse consequences for their offspring. Some infants are drug dependent at birth or are born HIV positive. Some remain in hospitals beyond their need for in-hospital medical care, while others are placed in foster care or leave the hospital with their parent(s) but quickly come to the attention of the child protective services agency. Frequently, there are young siblings who may be at jeopardy in the home or who are already in out-of-home care.

Children exposed to drugs, and those who acquire AIDS, frequently pose difficult medical and behavioral problems. Their neurological deficits and developmental delays can prove very trying for caregivers. Biological and foster parents, relatives, adoptive parents and other caretakers often need special training and supportive services to help them meet the children's needs and to provide respite for the caretakers themselves.

Although the need to protect the infant may be immediate, achieving premanency for the child is typically slow and complex. Some parents may be motivated to keep the child, but not to change their behaviors; other parents may be motivated to change their behaviors, but are incapable of accessing the appropriate services on their own or of maintaining improved behaviors in their current environment. The service needs of the parent may be many, yet needed services may be fragmented among many different agencies. Some services may not be readily available. Some, such as drug treatment, may not be readily available for pregnant women. Some services may not be culturally sensitive, and others may not be entirely appropriate to the client's needs.

Yet, if permanency is to be achieved over a short period early in the life of the developing child, intensive efforts must be made with the family to determine its suitability to care for the child. If that is not possible, steps must be taken toward constructive long-term

solutions to provide premanency for the child. Toward these ends, systematic action must be taken to obtain and deliver a comprehensive set of services to the biological and/or foster or adoptive family and the child.

A number of discretionary programs within ACYF and throughout the Department of Health and Human Services fund projects which are related to the issues addressed by this announcement. A brief description of these programs with the name of a contact person is attached in the Appendix. Prospective applicants are urged to include these existing programs in the service network proposed.

Emphasis on Coordination

All applicants should utilize an existing consortium or develop a consortium or other coordinating entity for the purpose of carrying out the project funded under this announcement. This may include public health, child welfare, substance abuse treatment and other relevant human services agencies. Insofar as possible, applicants are also encouraged to formalize working relationships with the police and courts; mental health, developmental disabilities, Head Start, and special education providers; and community parent education and parent support programs, including in-home visiting, respite care, and housing assistance in the community. Plans for coordination, joint medical-social service case management, outstationing child welfare staff at hospitals where large numbers of at-risk infants are being delivered, or other methods to be used to bring about comprehensive service delivery should be described in the applicant's proposal and supported by documentation.

The agency receiving the grant must assume fiscal and administrative responsibilities for the use of grant funds. The role of cooperating agencies must be explicit and supported by letters of specified commitment to the project. Pro forma support letters will not be considered responsive. Also, each application must include as a specific goal the development of strategies to coordinate and make optimal use of all relevant private, Federal, State, and local resources to establish and maintain services beyond the life of the grant.

Part II: Responsibilities of the Grantee

A. Priority Area I—Model Service Projects

Proposals will be considered under this priority area which are designed to organize, make accessible, access and implement a comprehensive set of services to:

- Prevent the abandonment of infants and young children;
- Identify and address the needs of abandoned infants and children; and
- Assist abandoned infants and children to reside with their biological families, relatives, or foster and adoptive families, as appropriate. Short-term, transitional residential care services for small groups of infants or young children may be provided. However, it must be shown that a sufficient number of families cannot be recruited and trained to provide foster care for abandoned infants or young children in the community, and that these children would otherwise remain in hospitals inappropriately. Such proposals will be considered only if they are integral to a larger system of services working to achieve permanency for these children; they may not include the costs of construction or other structural changes for facilities.

In order to assure that consideration is given to the widest range of possible interests for program development, applicants must consider the broad range of possible circumstances confronting at-risk parents in the target community, including the following:

Before pregnancy: education about prenatal care, emphasizing the dangers of substance abuse, and other issues related to the prevention of abandonment.

During pregnancy: sensitizing all programs in the community to the importance of recognizing drug abuse during pregnancy, and providing voluntary services as often as possible.

Pregnant women in trouble where drug use is a factor: women who are arrested, victims of domestic violence, or reported to protective services for child maltreatment need special attention.

Women from high drug use areas seeking prenatal care, or entering a hospital for delivery.

Parents of infants who must remain in the hospital for any medical reasons related to HIV or possible drug involvement.

Families with drug exposed infants and young children in need of support programs.

Some promising strategies which may be considered in formulating proposals incude:

- Comprehensive programs with as many services as possible available at one site and located in areas accessible to the client population.
- Assured confidentiality to build client trust and encourage utilization of programs and services.
- Multidisciplinary collaboration to meet variable client needs including treatment, interagency agreements, use of a single case manager and integration of multi-agency case plans.
- Intensive interventions to meet the client's many needs over the long-term including home visits, child care, drop-in centers, and 24-hour crisis telephone lines.
- Supportive drug treatment services, adapted for women, with peer support to focus on common problems and avoiding confrontational group processes commonly used with men.
- Residential treatment and/or drug free housing before and after the birth for women and children to enable them to leave their provocative living environments where drugs and alcohol are readily available.
- Parent education and quality child care to support rehabilitation of the parent and the child.
- Respite care for biological, foster and adoptive parents.

Applicants for a model service project under this priority area may include training activities as a part of the project and need not apply separately for a training grant under Priority Area II. All applicants must address resource development and coordination as a goal of the program.

Each model service project must agree to fund a third-party evaluation as an integral part of the demonstration effort. This evaluation should be designed to collect systematic data to answer questions such as the following:

What are the characteristics of families who abandon children?

What are the service needs of children/mothers/families of drug exposed infants? Of HIV positive infants?

What are the outcomes of project services for children/mothers?

What are the barriers to comprehensive case management and to the coordination of service delivery?

What changes have been most helpful in improving the delivery of services?

The project director together with their third party evaluation contractor, must agree to meet with the Federal Project Officer within the first six months of the project to participate in the development of a coordinated evaluation plan.

Duration and funding level: Grants ranging from $150,000 to $450,000 per year, depending upon need and the scope of the proposed project, will be awarded for a two-year project period

with the possibility of a third year dependent upon satisfactory performance and the availability of funds. Approximately 20 projects will be funded.

B. Priority Area II—Training Projects

To meet the needs of this growing population of children and families, training is needed to increase the sensitivity of all service providers and to improve service delivery. Infants and young children at-risk of abandonment, or who have been abandoned, and their caretakers have special needs. Special efforts must be made to train caregivers to prevent abandonment, to help reunite families when children have been placed in foster care and when it is not feasible to reunify the family, to take the necessary steps to achieve permanency for the child in a nurturing and caring home.

Preventing abandonment requires early intervention and support to help women of childbearing age understand the risks of drug abuse to the unborn child; to avoid the use of illicit drugs and alcohol before and during pregnancy; to seek early prenatal care; to accept substance abuse treatment and supportive services; and to provide positive parenting. Mothers who learn that they are HIV positive need similar supports and access to treatment and other services.

Drug-exposed and HIV positive infants may differ in their needs, but both have special needs and frequently prove difficult to care for. Low birthweight, medical problems, and neurological and developmental delays are not uncommon. Often these children do not behave or respond in ways that correspond to the child's age and expected developmental stage. Bonding may be difficult and extraordinary patience may be needed in their care. Frequently, these infants have older siblings who may be in the home or in foster care who must also be considered in the case management plan for the family. Whether these children are cared for by parents, by relatives, or by foster parents, caregivers need training in what to expect of these children, how to nurture and care for them, and how to access respite care and other supportive services.

When children are placed in foster care, reasonable efforts to rehabilitate the family may involve multiple service providers. Coordination and communication among them is essential for comprehensive care and to avoid fragmented or duplicated services. The developmental needs of the infant dictate the importance of achieving early permanence for the child. Responsible decisions must be made concerning the feasibility of reuniting the child with the parent. When it is clear that children cannot be reunited with the family, immediate steps need to be taken to arrange for a permanent placement for the child.

To assure appropriate and timely services to this growing population of children and families, the combined efforts of the following service providers are needed:

- Health care, social service, and substance abuse treatment professionals;
- Hospital, court, other law enforcement, and community agency staff;
- Agency staff responsible for case management and permanency planning;
- Providers of respite care and other child care services;
- Biological parents, other caregiving relatives and their families; and
- Foster and adoptive parents.

Thoughtful consideration needs to be given to their varying and related training needs, the relevance of extant training materials, and methods for multidisciplinary training and improved communication among these groups.

Under this priority area, we will consider proposals to accomplish these training and coordination purposes. Proposals should reflect:

- An understanding of existing service structures and relationships affecting those who have been or are at-risk of abandonment;
- A description of those to be trained, and an understanding of their needs, with particular attention to multidisciplinary or cross-agency requirements;
- Knowledge and appropriateness of existing training materials, and how they would be used or modified;
- Consultation with and evidence of multidisciplinary or cross-agency participation among public and private social service, medical and health care agencies, the courts and community agencies, and others, as appropriate, in the geographic area to be served; and
- Agency commitments to provide follow-up training and training of newcomers to the network.

Duration and funding level: Grants ranging from $75,000 to $100,000, depending upon need and the scope of the proposed project, will be awarded for a 17-month project period. Up to 10 projects will be funded.

C. Priority Area III—Resource Development and Coordination Projects

Among the findings underlying the Abandoned Infants Assistance Act, the Congress observed a need for the development of funding strategies that coordinate and make optimal use of all private, Federal, State, and local resources to establish and maintain the comprehensive services needed to care for abandoned or at-risk HIV positive or drug-affected infants and young children. Few, if any, communities have sufficient funds available to meet the service needs of this population, and the limitation of resources is compounded by barriers to their effective utilization. While it is clear that categorical programs and specialized providers must be linked and their services coordinated if their actions are to be effective, organizational barriers may inhibit maximum use of resources and hinder program effectiveness.

In many instances, the problems of the children and families coming into care today far outstrip the capacity of any single agency's mandate. However, although many programs may refuse to take on additional clients when service limits are reached, public child welfare agencies cannot close intake. State child welfare agencies remain the responsible agency for children in need and their families and must respond.

Often an interim or crisis solution becomes long-term and life-shaping for children and families. The challenge for State and local governments is to arrange for accessible core services without regard for agency boundaries so that a local worker or administrator need not negotiate or barter for services for each individual child or family. All prevention programs should be considered as resources in developing strategies to coordinate funding, as well as treatment programs for child abuse, substance abuse, adolescent pregnancy prevention, prenatal health care, Women, Infant, Child (WIC), Early and Periodic Screening, Diagnosis and Treatment (EPSDT), mental health services, early education programs, parenting education, respite care, crisis services, child care and other family support programs.

Applications should reflect a sufficiently broad membership and authority to involve major service systems, related human resources, and funding sources so that their coordinated use will result in better utilization and increased cost effectiveness (e.g., pooled funds and re-deployed personnel and other resources). Proposed development and coordination activities should reflect identified goals and objectives rather than a single rearrangement of priorities in which other programs will have funding reduced.

Projects may be funded for two years: one year for planning and development, and the second year for implementation. However, agencies which have an existing plan may apply for an implementation grant of two years duration or less.

Applicants must develop or submit a proposed plan with assurances of cooperation from the major programs to be involved, and of their authority to implement their own recommendations. In many instances, the need for the services is centered in major metropolitan areas, while the funding sources are under State control. Therefore, it is particularly important that both of these entities express commitment in the application.

Project goals and program design, including target service areas, service delivery plans, and anticipated outcomes, must be clearly defined. Funding sources must be identified and the proposed funding strategy described; the implementation plan and its impact on future relationships between the entities including decision-making, coordination and resource utilization must be described. Barriers to implementation must be identified and plans for eliminating such barriers must be addressed.

Duration and funding level: Projects will be funded for two years, with an option for a third year dependent upon satisfactory performance and the availability of funds, at an amount ranging from $50,000 to $75,000. Approximately 10 projects will be funded.

Part III: Application Requirements

A. Standard Form 424

Applications for grants under section 101 of the Act (42 U.S.C. 670 note) must be submitted on the Standard Form 424, a copy of which is included with this announcement. Each application must be signed by an individual authorized to act on behalf of the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award. The applicant must provide an abstract or project summary which describes the proposed activities for the specified project period.

B. Submission

One signed original and two copies of the grant application must be mailed or hand delivered to: Abandoned Infants Assistance Program, Office of Human Development Services, Grants and Contracts Management, Division, HDS/OMS, Hubert H. Humphrey Building, Room 341–F1, 200 Independence Avenue, SW., Washington, DC 20201, Attention: Margaret Tolson.

Hand-delivered applications will be accepted Monday through Friday prior to and on the deadline date during the working hours of 9 a.m. to 5:30 p.m. in the lobby of the Hubert H. Humphrey Building located at 200 Independence Avenue, SW., in Washington, DC. When hand-delivering an application prior to the deadline date, call (202) 245–9016 from the lobby and a staff person will arrive to receive the application.

C. Closing Date for Submission of Applications

The closing date for submittal of applications under this program announcement is August 21, 1990.

1. *Deadlines.* An application will be considered as meeting the deadline if it is either:

a. Received on or before the deadline date, at the HDS Grants and Contracts Management Office, or,

b. Sent on or before the deadline date, and received by the granting agency in time for the independent review under Chapter 1–62 of the Health and Human Services Grants Administration Manual. (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Applications submitted by other means.* Applications which are not submitted in accordance with the above criteria shall be considered as meeting the deadline only if they are physically received before close of business on or before the deadline date.

3. *Late Applications.* Applications which do not meet the criteria in paragraphs 1 and 2 of this section are considered late applications. The granting agency shall notify each late applicant that its application will not be considered in the current competition.

4. *Extension of Deadlines.* The granting agency may extend the deadlines for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if the granting agency does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

D. Grantee Share of the Project

HDS will not make awards for the entire project cost. Successful applicants must contribute $1 secured from non-Federal sources for every $3 received in Federal funding. The non-Federal share of total project costs may be in the form of third party in-kind contributions or cash. Applicants will be required to display in their budget any funds proposed as match.

E. Application Consideration

Applications conforming to the requirements of this announcement will be grouped by category, i.e., Model Service Projects, Training Projects, or Resource Development and Coordination Projects, and will be reviewed by non-Federal experts, and Federal staff from outside the Administration for Children, Youth and Families on the basis of the criteria set forth in this announcement. The results of this review will be a primary factor in the grant award decision process.

F. Description of Program

The application must describe the proposed plan for (a) Model Service Projects, (b) Training Projects, or (c) Resource Development and Coordination Projects as specified in the priority areas.

G. Evaluation and Reporting Requirements

Section 102(a) of the Act requires the Secretary to provide for evaluations of all projects carried out under section 101. All projects will be required to cooperate in this evaluation, and to provide program data as requested. In addition, all programs must submit quarterly program and fiscal reports as specified in the instructions attached to the Financial Assistance Award.

H. Dissemination

The application must set forth a plan for dissemination of the results of the project for which assistance is being requested and must agree to cooperate with the development of a Report on Effective Care Methods as required by section 102(c) of the Act.

I. Statutory Assurances

Each application must include a statement assuring the Department that the grantee will meet the following statutory requirements.

(1) The following assurances are required under section 101(b) of the Act if the applicant expends the grant to carry out any program of providing care to infants and young children in foster homes or in other nonmedical residential settings away from the parents:

- That a case plan of the type described in paragraph (1) of section 475 of the Social Security Act will be developed for each infant or young child (to the extent that such infant or young

child is not otherwise covered by such a plan) for whom funds would be expended for foster care; and

• That the program includes a case review system of the type described in paragraph five (5) of section 475 of the Social Security Act (covering each such infant and young child who is not otherwise subject to such a system).

Section 475(1)

Paragraph (1) of section 475 of the Social Security Act reads as follows: "The term 'case plan' means a written document which includes at least the following:

a. A description of the type of home or institution in which a child is to be placed, including a discussion of the appropriateness of the placement and how the agency which is responsible for the child plans to carry out the voluntary placement agreement entered into or judicial determination made with respect to the child in accordance with section 472(a)(1); and

b. A plan for assuring that the child receives proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions in the parents' home, facilitate return of the child to his own home or the permanent placement of the child, and addressing the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child under the plan.

c. Where appropriate, for a child age 16 or over, the case plan must also include a written description of the programs and services which will help such child prepare for the transition from foster care to independent living."

Section 475(5)

Paragraph five (5) of section 475 of the Social Security Act reads as follows: "The term 'case review system' means a procedure for assuring that:

a. Each child has a case plan designed to achieve placement in the least restrictive (most family like) setting available and in close proximity to the parents' home, consistent with the best interest and special needs of the child;

b. The status of each child is reviewed periodically but no less frequently than once every six months by either a court or by administrative review in order to determine the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and to project a likely date by which the child may be returned to the home or placed for adoption or legal guardianship; and

c. With respect to such child, procedural safeguards will be applied, among other things, to assure each child in foster care under the supervision of the State of a dispositional hearing to be held, in a family or juvenile court or another court (including a tribal court) of competent jurisdiction, or by an administrative body appointed or approved by the court, no later than eighteen months after the original placement (and periodically thereafter during the continuation of foster care), which hearing shall determine the future status of the child (including, but not limited to whether the child should be returned to the parent, should be continued in foster care for a specified period, should be placed for adoption, or should (because of the child's special needs or circumstances) be continued in foster care on a permanent or long-term basis) and, in the case of a child who has attained age 16, the services needed to assist the child to make the transition from foster care to independent living; and procedural safeguards shall also be applied with respect to parental rights pertaining to the removal of the child from the home of his parents, to a change in the child's placement, and to any determination affecting visitation privileges of parents."

(2) That funds provided under this section shall be used only as specified in the application approved by the Secretary (section 101(c)(1)).

(3) That fiscal control and fund accounting procedures must be established as may be necessary to ensure proper disbursement and accounting of Federal funds paid to the applicant under this announcement (section 101(c)(2)).

(4) That reports to the Secretary must be made annually on the utilization, cost, and outcome of activities conducted, and services furnished under this grant (section 101(c)(3)).

(5) That if during the majority of the 180-day period preceding the date of the enactment of this Act, the applicant has carried out any program with respect to the care of abandoned infants and young children. The applicant must certify that funds provided under the grant will be expended only for the purpose of expanding such services (section 101(c)(4)).

(6) That the applicant agrees to cooperate with and provide data to a Federally funded evaluation contractor (section 102(a)).

J. Waiver of Executive Order 12372 Requirements for a 60-Day Comment Period for the States' Single Point of Contact (SPOC)

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposal Federal Assistance under covered programs. All States and territories except Alaska, Idaho, Kansas, Louisiana, Minnesota, Nebraska, Virginia, American Samoa, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these nine areas need take no action regarding E.O. 12372. Applications for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirement.

Other applicants should contact their SPOC as soon as possible to alert them of the prospective application and receive any necessary instructions. Applicants must submit any required material to the SPOC as early as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the SF 424, Block 16a. HDS will notify the State of any applicant who fails to indicate SPOC contact (when required) on the application form.

The Office of Human Development Services (HDS) must obligate the funds for these awards by September 30, 1990. Therefore, the required 60-day comment period for State process review and recommendation has been reduced and will end on (Insert date 30 days from the application deadline date) in order for HDS to receive, consider, and accommodate SPOC input. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to differentiate clearly between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to HDS, they should be addressed to Abandoned Infants Assistance Program, Department of Health and Human Services, Office of Human Development Services, Grants

and Contracts Management Division, Room 341–F, Hubert H. Humphrey Building, 200 Independent Avenue, SW., Washington, DC 20201. A list of the Single Points of Contact for each State and Territory is included in Appendix I of this announcement.

Successful applicants will be notified thorugh the issuance of a Financial Assistance Award. The award will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the grant, the total project period, and the amount of the non-Federal matching share.

Organizations whose applications have been disapproved will be notified in writing by the Commissioner of the Administration for Children, Youth and Families.

K. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Public Law 96–511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and recordkeeping requirements and regulations, including program announcements. This program announcement does not contain information collection requirements beyond those approved by OMB.

L. Other Requirements

(1) The description of activities proposed as specified under Priority Areas I, II and III above shall be limited to no more than 50 typed pages, exclusive of attachments.

(2) All cooperating agencies having a role in the activities proposed must submit a letter signed by an official with authority to commit the agency or organization. This letter must specify the activities and level of involvement for the cooperating entity. Do not submit general letters of support.

(3) Maps indicating areas to be served, locations of services, or other geographic information may be attached.

(4) A table or chart showing the interrelationships and coordination patterns of agencies for the proposed program is required.

(5) All public agencies must certify that the program will not be delayed because of general hiring freezes or restrictions on travel when this relates to hiring, travel or other activities of the funded program. The responsible official signing the application must be able to authorize exemptions from such restrictions.

Part IV: Criteria for Review and Evaluation of Applications

Applications will be reviewed and evaluated against the following criteria:

(1) Objectives and Need for Assistance (20 Points)

The application pinpoints any relevant physical, economic, social, financial, institutional, or other problems requiring a solution; demonstrates the need for the assistance; states the principal and subordinate objectives of the project; provides supporting documentation or other testimonies from concerned interests other than the applicant; and includes and/or footnotes relevant data based on the results of planning studies. It identifies the precise location of the project and area to be served by the proposed project. Maps and other graphic aids may be attached.

(2) Results or Benefits Expected (20 points)

The application identifies the results and benefits to be derived, the extent to which they are consistent with the objectives of the proposal and indicates the anticipated contributions to policy, practice, theory and/or research. The proposed project costs are reasonable in view of the expected results.

(3) Approach (35 Points)

The application outlines a sound and workable plan of action pertaining to the scope of the project and details how the proposed work will be accomplished; cites factors which might accelerate or decelerate the work, giving acceptable reasons for taking this approach as opposed to others; describes and supports any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements; and provides for projections of the accomplishments to be achieved. It lists the activities to be carried out in chronological order, showing a reasonable schedule for accomplishments and target dates.

To the extent applicable, the application identifies the kinds of data to be collected and maintained, and discusses the criteria to be used to evaluate the results and successes of the project. It describes the evaluation methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. The application also lists each organization, agency, consultant, or other key individuals or groups who will work on the project, along with a description of the activities and nature of their effort or contibution.

(4) Staff Background and Organization's Experience (25 Points)

The application identifies the background of the project director/principal investigator and key project staff (including name, address, training, educational background, and other qualifying experience) and the experience of the organization to demonstrate the applicant's ability to effectively and efficiently administer the project. The application describes the relationship between this project and other related work planned, anticipated or underway by the applicant with Federal assistance.

Catalog of Federal Domestic Assistance Number 13.551: Abandoned Infants Assistance Program.

Dated: May 29, 1990.

Wade F. Horn,

Commissioner, Administration for Children, Youth and Families.

Approved: May 30, 1990.

Mary Sheila Gall,

Assistant Secretary for Human Development Services.

Appendix I

State Single Points of Contact

Alabama

Mrs. Moncell Thornell, State Single Point of Contact, Alabama Department of Economic & Community Affairs, 3465 Norman Bridge Road, Post Office Box 250347, Montgomery, Alabama 36125–0347, Telephone (205) 284–8905.

Arizona

Ms. Janice Dunn, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315.

Arkansas

Mr. Joseph Gillesbie, Manager, State Clearinghouse, Office of Intergovernmental Service, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 371–1074.

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480.

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Telephone (303) 866–2156.

Connecticut

Under Secretary, Attn: Intergovernmental Review coordinator, Comprehensive Planning Division, Office of Policy and Management,

80 Washington Street, Hartford, Connecticut 06106–4459, Telephone (203) 566–3410.

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326.

District of Columbia

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Room 416, District Building, 1350 Pennsylvania Avenue, NW., Washington, DC 20004 Telephone (202) 727–9111.

Florida

Karen McFarland, Director, Florida State Clearinghouse, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 488–8114.

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, SW., Atlanta, Georgia 30334, Telephone (404) 656–3855.

Hawaii

Mr. Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, State Capitol, Honolulu, Hawaii 96813, Telephone (808) 548–3016 or 548–3085.

Illinois

Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Telephone (217) 782–8639.

Indiana

Frank Sullivan, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610.

Iowa

Steven R. McCann, Division for Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725.

Kentucky

Robert Leonard, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor Capital Plaza Tower, Frankfort, Kentucky 40601, Telephone (502) 564–2382.

Maine

State Single Point of Contact, Attn: Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261.

Maryland

Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490.

Massachusetts

State Singel Point of Contact, Attn: Beverly Boyle, Executive Office of Communities & Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001.

Michigan

Milton O. Waters, Director of Operations, Michigan Neighborhood Builders Alliance, Michigan Department of Commerce, Telephone (517) 373–7111.

Please direct correspondence to: Manager, Federal Project Review, Michigan Department of Commerce, Michigan Neighborhood Builders Alliance, P.O. Box 30242, Lansing, Michigan 48909, Telephone (517) 373–6223.

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, Office of Policy Development, 421 West Pascagoula Street, Jackson, Mississippi 39203, Telephone (601) 960–4280.

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834.

Montana

Deborah Stanton, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of Budget and Program Planning, Capitol Station, Room 202-State Capitol, Helena, Montana 59620, Telephone (406) 444–5522.

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, NV. 89710, Attn: John B. Walker, Clearinghouse Coordinator.

New Hampshire

Jeffery H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2 1/2 Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155.

New Jersey

Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613.

Please direct correspondence and questions to: Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625–0803, Telephone (609) 292–9025.

New Mexico

Dorothy E. (Duffy) Rodriquez, Deputy Director, State Budget Division, Department of Finance & Administration, Room 190, Bataan Memorial Building, Sante Fe, New Mexico 87503, Telephone (505) 827–3640.

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605.

North Carolina

Mrs. Chrys Baggett, Director, Intergovernmental Relations, N.C. Department of Administration, 116 W. Jones Street, Raleigh, North Carolina 27611, Telephone (919) 733–0499.

North Dakota

William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Telephone (701) 224–2094.

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698.

Oklahoma

Don Strain, State Single Point of Contact, Oklahoma Department of Commerce, Office of Federal Assistance Management, 6601 Broadway Extension, Oklahoma City, Oklahoma 73116, Telephone (405) 843–9770.

Oregon

Attn: Dolores Streeter, State Single Point of Contact, Intergovernmental Relations Division, State Clearinghouse, 155 Cottage Street, NE., Salem, Oregon 97310, Telephone (503) 373–1998.

Pennsylvania

Sandra Kline, Project Coordinator, Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108, Telephone (717) 783–3700.

Rhode Island

Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656.

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning.

South Carolina

Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0493.

South Dakota

Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773–3212.

Tennessee

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676.

Texas

Tom Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463–1778.

Utah

Utah State Clearinghouse, Attn: Carolyn Wright, Office of Planning and Budget, State

of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Telephone (801) 538–1547.

Vermont

Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326.

Washington

Marilyn Dawson, Washington Intergovernmental Review Process, Department of Community Development, 9th and Columbia Building, Mail Stop GH–51, Olympia, Washington 98504–4151, Telephone (206) 753–4978.

West Virginia

Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348–4010.

Wisconsin

James R. Klauser, Secretary, Wisconsin Department of Administration, 101 South Webster Street, GEF 2, P.O. Box 7864, Madison, Wisconsin 53707–7864, Telephone (608) 266–1741.

Please direct correspondence and questions to: William C. Carey, Section Chief, Federal-State Relations Office, Wisconsin Department of Administration, (608) 266–0267.

Wyoming

Ann Redman, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Telephone (307) 777–7574.

Territories

Guam

Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472–2285.

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950.

Puerto Rico

Patria Custodio/Israel Soto Marrero, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444.

Virgin Islands

Jose L. George, Director, Office of Management and Budget, No. 32 & 33 Kongens Gade, Charlotte Amalie, V.I. 00802, Telephone (809) 774–0750.

Appendix II

ACYF Discretionary Programs Related to the Abandoned Infants Assistance Act

• *The Child Welfare Research and Demonstration Program* provides financial support to State and local governments or other nonprofit institutions, agencies, and organizations engaged in research or demonstrations in the field of child welfare. Research and demonstration grants supported under this program address services to families to prevent the need for out-of-home placement, the development of alternative placements for children including foster care and adoption, and reunification services so that children can return home, if at all possible. Several projects serving HIV positive children have been funded under this program. For further information, call Cecelia Sudia, (202) 245–0764.

• *The Child Welfare Services Training Grant Program* provides discretionary grants to accredited public or nonprofit institutions of higher learning to develop and improve educational and training programs related to child welfare and to assist child welfare agencies to improve the skills and qualifications of staff. For further information, call Phyllis Nophlin, (202) 245–0653.

• *The Adoption Opportunities Program* provides financial support to State and local agencies and other profit or non-profit organizations for research and demonstration projects to improve adoption practices, to eliminate barriers to adoption and to find permanent homes for children, particularly children with special needs (including children who are HIV positive or who have been drug-exposed). For further information, call Delmar Weathers, (202) 245–0671.

• *Child Abuse and Neglect* discretionary activities are designed to assist and enhance national, State, and community efforts to prevent, identify, and treat child abuse and neglect. These activities include conducting research and demonstration grants; supporting services improvement projects; gathering, analyzing and disseminating information through a national clearinghouse; and providing grants to eligible States to strengthen child protective services programs. Several projects related to drug exposed babies and substance abusing mothers have been funded under this program, and preliminary findings are available. For further information, call Alan Hogle, (202) 245–0631.

• *The Temporary Child Care for Children With Disabilities and Crisis Nurseries Program* provides demonstration grants to States to assist private and public agencies in developing temporary child care (respite care) for children with disabilities and crisis nurseries for children at risk of child abuse and neglect. Many of these projects provide services which will be needed for abandoned infants and these programs, where available, should be included in planning for abandoned infants. For further information, call Phyllis Nophlin, (202) 245–0653.

• *The Administration on Developmental Disabilities* (ADD) provides funding for State Planning Councils, Protection and Advocacy Agencies, University Affiliated Programs, and projects of national significance authorized under the Developmental Disabilities Act, 42 U.S.C. 6000, et seq. Networks of research and service delivery systems are supported to promote improvements in the quality, scope and range of services available for those who are developmentally disabled.

At present, in cooperation with the Children's Bureau, ADD has identified pediatric AIDS as a priority for funding under the Office of Human Development Services' Coordinated Discretionary Funds Program announcement, Priority Area 1.4B (published in the Federal Register, March 8, 1990). Project applications were sought to meet the needs of abandoned infants and young children who may test HIV positive or who may be placed in foster care because the mother is HIV positive and unable or unwilling to care for the child. Funded projects will emphasize the (1) Identification of children who are at risk; (2) development of early intervention strategies; (3) coordination of services; and (4) provision of training. For further information, call Kay Smith, (202) 245–2984.

Other DHHS Discretionary Programs Related to the Abandoned Infants Assistance Program.

• *The Office of Maternal and Child Health*, Bureau of Health Care Delivery and Assistance, Health Resources and Services Administration, Public Health Service, provides formula grants, special project grants, and research and training authorized under title V of the Social Security Act, as amended. State grants-in-aid emphasize interagency coordination, early identification of children in need of health services, follow-up care and treatment to reduce the effects of chronic conditions, and prevention of handicapping conditions originating at birth. Support is provided for maternal and child health services and crippled children's services, particularly for mothers and children in low-income areas.

In FY 1988, the Office of Maternal and Child Health launched an initiative that was launched towards "Building Systems of Care for Children with HIV Infection and Their Families." A variety of Pediatric AIDS Health Care demonstrations, and special projects as well as training and national leadership activities have been funded to promote effective ways to prevent HIV infection, especially through perinatal transmission; to develop community-based, family-centered, coordinated services for infants and children with HIV infection; and to develop programs to reduce the spread of infection to vulnerable populations of children and adolescents. For information concerning projects in your area, call Irene Forsman, (301) 443–1080.

• *The Office for Substance Abuse Prevention* within the Alcohol, Drug Abuse, and Mental Health Administration provides for a variety of activities authorized under the Anti-Drug Abuse Act, Public Law 100–690. Since 1988, model demonstration projects have been funded to promote interagency coordination in the delivery of comprehensive services for substance abusing pregnant and post-partum women and their infants; to increase the availability and accessibility of prevention, early intervention, and treatment services for these populations; to decrease the incidence and prevalence of drug and alcohol use among pregnant and post-partum women; to improve the birth outcomes of women who used alcohol and other drugs during pregnancy and to decrease the incidence of infants affected by maternal substance use; and to

reduce the severity of impairment among children born to women involved in substance abuse.

Primary prevention and early intervention projects have also been funded to demonstrate effective comprehensive service systems for the prevention, treatment and rehabilitation of drug and alcohol abuse among high risk youth, many of whom become teenage parents. For information concerning projects in your area, call Ellen Hutchins, (301) 443–5720.

BILLING CODE 4130–01–M

APPENDIX III

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

[FR Doc. 90-14562 Filed 6-21-90; 8:45 am]
BILLING CODE 4130-01-C

federal register

Friday
June 22, 1990

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Parts 108 and 129
Use of X-Ray Systems; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 108 and 129

[Docket No. 26268; Notice No. 90-17]

RIN 2120-AD13

Use of X-ray Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend the airplane operator security regulations by removing the exception to meeting the current X-ray imaging standard for X-ray screening systems in use prior to July 22, 1985. Each United States air carrier conducting screening under a mandatory security program would be required to use X-ray systems for carry-on and checked articles that meet the X-ray imaging standard required under its approved security program. Likewise, each foreign air carrier that lands or takes off in the United States would be required to use X-ray screening systems for carry-on and checked articles in the United States that meet the X-ray imaging standard under its accepted security program. This action is needed due to the increased sophistication of terrorist acts. The intended effect is to increase the safety of passengers and crewmembers aboard aircraft by providing an upgraded aid at airport screening points to prevent the carriage of explosives, incendiaries, or deadly or dangerous weapons.

DATES: Comments must be submitted on or before August 20, 1990.

ADDRESSES: Comments on this notice should be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 26268, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked Docket No. 26268. Comments may be examined in room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lynne Osmus, Civil Aviation Security Division (ACS-101), Office of Civil Aviation Security, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8058.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed rules by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the specified closing date will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26268." The postcard will be date stamped and mailed to the commenter.

Availability of NPRM's

Any interested person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center (APA-430), 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Requests must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Statement of the Problem

Attacks against civil aviation have increased in sophistication over the past decade. As a result, security has become an even greater concern of the aviation community. In recent years, sophisticated explosive devices have been used to damage or destroy civilian airliners resulting in the loss of many lives. The bombing of Pan American World Airways (Pan Am) Flight 103 demonstrates the continuing need to protect the safety and security of passengers and crewmembers aboard air carriers. Eliminating any exceptions to meeting the most current X-ray imaging standard would be one method by which to address this need.

History

The FAA's Civil Aviation Security Program, initiated in 1973, requires certain U.S. air carriers to conduct security screening to prevent or deter the carriage aboard aircraft of any explosive, incendiary, or deadly or dangerous weapon on or about any individual's person or accessible property. Part 108 of the Federal Aviation Regulations (FAR) (14 CFR part 108), which pertains to U.S. air carriers, was promulgated in 1981 (46 FR 3782; January 15, 1981). The pertinent provisions in part 129, which govern the operations of foreign air carriers that hold a permit issued by the Civil Aeronautics Board or the Department of Transportation under section 402 of the Federal Aviation Act or that hold another appropriate economic or exemption authority issued by those entities, were promulgated in 1976 (41 FR 30106; July 22, 1976).

On May 28, 1985, the FAA issued Amendments Nos. 108-1 and 129-13 (50 FR 25654; June 20, 1985), which established a new standard for testing the effectiveness of X-ray systems. This new standard was effective on July 22, 1985; however, it did not apply to X-ray systems in use prior to that date. In a parallel action, the FAA amended each air carrier's approved security program to include a "grandfather" provision for X-ray systems in use prior to July 22, 1985.

Nearly a decade prior to that, on November 29, 1976, the FAA promulgated new 14 CFR part 191 (41 FR 53777; December 9, 1976) establishing the requirements for withholding security information from disclosure under the Air Transportation Security Act of 1974. Air carrier security programs are documents detailing how U.S. and foreign air carriers will comply with the security requirements contained in the FAR. They contain sensitive security requirements, including specific performance criteria and operational information for X-ray systems, and are not available to the public.

Related Activities

For many years, the passenger screening system has been effective in countering the threat to domestic and international civil aviation, which primarily came from hijackers. In recent years, this threat has expanded to

include aircraft bombings. The bombing of Pan Am Flight 103 is a reminder that civil aviation is still vulnerable to criminal and terrorist acts.

A comprehensive review of security procedures has been conducted to determine where existing procedures may be improved and where new procedures may be warranted. On April 3, 1989, Secretary of Transportation Samuel K. Skinner announced a number of aviation security initiatives to ensure protection of travelers at airports in the United States and other countries. Significant among these initiatives was the commitment to propose the removal of grandfather provisions for older X-ray systems. Other initiatives include requiring the widespread deployment of explosives detection systems (EDS) and the establishment of a mandatory security directives system, both the subject of separate rulemakings that resulted in the issuance of final rules. The final rule requiring EDS was issued on August 30, 1989 (54 FR 36938; September 5, 1989). The final rule establishing the security directives and information circulars system was issued on July 6, 1989 (54 FR 28982; July 10, 1989).

Current Requirements

Presently, part 108 requires each holder of an FAA air carrier operating certificate required to conduct screening to use the procedures, facilities, and equipment described in its approved security program to prevent or deter carriage aboard airplanes of any explosives, incendiaries, or deadly or dangerous weapons on or about each individual's person or accessible property. Part 129 requires each foreign air carrier landing or taking off in the United States to adopt and use a security program acceptable to the Administrator and designed to prevent or deter the carriage aboard airplanes of any explosive, incendiary device, or deadly or dangerous weapon on or about each individual's person or accessible property, with certain exceptions, through screening by weapon-detecting procedures or facilities.

Future Actions

The U.S. Government has actively supported research and development efforts in X-ray systems and the FAA has been evaluating X-ray systems on a continuing basis. The FAA recognizes that there have been significant technological advancements made in X-ray systems. Consequently, the FAA is considering a separate action proposing to amend approved air carrier security programs and accepted foreign air carrier security programs to establish a more stringent imaging standard than the current standard established in 1985. The FAA expects to make a final determination regarding a more stringent imaging standard prior to taking any final action in this rulemaking. Any final action as a result of this rulemaking will consider the impact, if any, of revision to the imaging standard.

As previously stated, security programs are exempt from disclosure under 14 CFR part 191. In accordance with 14 CFR 191.5, the FAA will not provide the current or any future performance criteria or detailed operational information in any document generally available to the public. The Director of Civil Aviation Security has determined that disclosure of this information would be detrimental to the safety of persons traveling in air transportation or intrastate air transportation.

General Discussion of the Proposals

The FAA is proposing to amend part 108 to ensure that all certificate holders use X-ray systems for carry-on and checked articles that meet the imaging requirements of their approved security programs. The FAA is also proposing to amend part 129 to require foreign air carriers who land or take off in the United States and who conduct screening under an accepted security program to use X-ray systems for carry-on and checked articles in the United States that meet the imaging requirements in their accepted security programs.

Section 108.17

Revision of current paragraph (a)(5) of this section would eliminate a grandfather clause allowing for the exception of certain X-ray systems from the requirement to meet the imaging requirements set forth in an approved air carrier security program using the step wedge specified in American Society for Testing and Materials Standard F792–82.

Section 129.26

Revision of current paragraph (a)(5) of this section would eliminate a grandfather clause allowing for the exception of certain X-ray systems from the requirement to meet the imaging requirements set forth in an accepted air carrier security program using the step wedge specified in American Society for Testing and Materials Standard F792–82.

Regulatory Evaluation Summary

Introduction

This section summarizes a draft full regulatory evaluation prepared by the FAA that provides detailed estimates of the economic consequences of this proposed regulatory action. The full evaluation quantifies, to the extent practicable, estimated costs to the private sector, consumers, Federal, State and local governments, as well as anticipated benefits and impacts.

Executive Order 12291 dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a draft Regulatory Impact Analysis of all "major" proposals except those responding to emergency situations or other narrowly defined exigencies. A "major" proposal is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, a significant adverse effect on competition or is highly controversial.

The FAA has determined that this proposal is not "major" as defined in the Executive Order, therefore a regulatory analysis, which includes the identification and evaluation of cost-reducing alternatives to the proposal, has not been performed. Instead, the FAA has prepared a regulatory evaluation of just this proposal without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains an initial regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96–354) and an international trade impact assessment. If more detailed economic information is desired than is contained in this summary, the reader is referred to the full regulatory evaluation contained in the docket.

Costs

The FAA estimates that there are 170 U.S. air carrier and 2 foreign air carrier X-ray systems currently in service that are incapable of meeting current imaging requirements using the step wedge specified in American Society for Testing and Materials Standard F792–82. Such systems would no longer be acceptable for airport security purposes under this proposed regulation. Thus, if issued as a final rule, air carriers would have to begin acquisition of new systems immediately. Even in the absence of this proposal, the 172 systems will some day cease to be used

for aviation purposes, anyway, once they reach the end of their useful lives. According to one manufacturer of X-ray systems, these units have a life expectancy of approximately 8 to 10 years. Because carriers have been prohibited since July 1985, from purchasing additional X-ray systems that do not meet the current imaging standard, all existing systems that fail to meet the standard must be at least 4 years old. Therefore, by assuming a 9-year average life for X-ray systems, the cost of this proposal is the difference between purchasing 172 new standard X-ray systems immediately (net of salvage value for replaced systems) versus purchasing new systems over a 5-year period as the existing systems wear out.

Carriers can choose to buy their replacement systems from several manufacturers. They also have a range of system capabilities to choose from. The proposed rule would reflect both carry-on and checked articles. For the purposes of this analysis, replacement system costs will reflect the price of a standard black and white X-ray system used for handcarried articles because this system meets the current standard. A sales representative for Astrophysics Research Corporation stated such systems retail for about $32,000 per system, including installation. Prices will vary, however, based on location and number of systems ordered. At $32,000 each, 172 new systems would cost about $5.50 million. The replaced system, which has somewhere between zero and 5 years of useful life remaining, will have some resale value for nonaviation purposes such as industrial security. The FAA estimates the current average resale value per system at $5,000, or about $0.86 million for all 172 systems still in use. Therefore, the total immediate outlay for new X-ray systems would be $5.50 million less $0.86 million=$4.64 million.

The net cost of this proposal would be $4.64 million less the cost of replacement systems that are not purchased until the existing systems wear out. In other words, the net cost of the proposal is the difference between the current cost of the systems and the discounted cost of the systems if purchased at a later date. No information is readily available concerning the exact age of each existing system that does not meet the current imaging standard or the current replacement rate of such systems. Therefore, it has been assumed for the purposes of this analysis that one-fifth (34.4) of these systems will be replaced in each of the next 5 years. By that time, each would be a minimum of 9 years old and have reached the end of the expected useful life. The discounted cost (a 10 percent discount rate is used) to purchase the systems over a 5-year period is $4.37 million. Therefore, the net cost of this proposal is $4.64 million less $4.37 million=$0.27 million, or about $1,570 per replacement X-ray system.

Another cost factor concerns anticipated differences in maintainance costs between the replaced systems and the replacement systems. The FAA expects their maintenance costs to be very similar, and will, therefore, not alter the above cost calculations. However, an Astrophysics Research Corporation representative indicated that many of the systems that would be replaced are equipped with image intensifiers that are relatively expensive, and might need replacing once a year. In comparison, technological improvements in the replacement systems have eliminated the need for image intensifiers. Therefore, it is possible that the overall costs of this proposal are somewhat overstated.

Benefits

The proposed regulation would make it more difficult to carry an explosive device onto domestic and international flights. Therefore, it is expected to provide an additional margin of safety and security for passengers and crew members aboard air carriers. The FAA cannot predict the number or severity of future incidents, let alone incidents that would be perpetrated if this proposal does not go into effect. The frequency of terrorist incidents would depend on several factors, including, but not limited to, the world-wide political climate, the skill and technical sophistication of terrorist organizations, and the success of efforts to avert these incidents.

The historical record reveals that 19 separate criminal acts and incidences of terrorism using explosives were perpetrated against U.S. air carriers between 1979 and 1988. Because the FAA expects the threat of sabotage to increase in the future, and because the current X-ray systems in question have been identified as a weak link in the overall U.S. civil aviation security system, it is assumed that some unknown amount of benefit will result from the proposal.

One way to assess the benefits of this proposal is to put expected costs into perspective. The total estimate cost of this proposal, discounted over 5 years (the estimated remaining life of the systems to be replaced), is $0.27 million. Therefore, if one life is saved sometime in the 5-year period after the proposed rule would become effective, the cost per life saved would be approximately $0.27 million. Similarly, if an aircraft with 200 passengers is saved from destruction as a result of this proposal, the cost per life saved would be only $1,350.

In comparison, using a minimum statistical value of a human life of $1.0 million, or about $0.79 million when discounted over 5 years, the benefits associated with saving a single life during the next 5 years would be nearly triple the estimated $0.27 million cost to accomplish it. Similarly, if an aircraft with 200 passengers and crew is saved as a direct result of this proposal, the ratio of benefits to costs would be 583 to 1.

Given the large difference between potential benefits and known costs, the FAA believes this proposed rule to be cost beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules that may have a "significant economic impact on a substantial number of small entities."

The FAA's criteria for a "substantial number" is a number that is not less than 11 and that is more than one-third of the small entities subject to the rule. For air carriers, a small entity has been defined as one who owns, but does not necessarily operate, nine aircraft or less. The FAA criteria for "a significant impact" is at least $3,700 per year for an unscheduled carrier and $51,800 or $92,700 per year for a scheduled carrier depending on whether or not the fleet operated includes small aircraft (60 or fewer seats). Although data collection on the carriers affected by this rule has not been completed, the FAA believes that it is very unlikely that the proposal would have a significant economic impact, positive or negative, on a substantial number of small entities. This is because the total estimated compliance cost associated with this rule is only $0.27 million spread over a 5-year period, and the estimated cost per replacement X-ray system is only $1,570. Unscheduled carriers would have to currently own and operate nearly 80 percent of the 172 X-ray systems in need of replacement for this rule to have a significant economic impact, positive or negative, on at least 11 small entities. The FAA believes that most of these

X-ray systems are currently owned and operated by entities that are not defined as small.

International Trade Impact Analysis

The proposal, if adopted, would have little or no impact on trade for U.S. firms doing business overseas or for foreign firms doing business in the United States. The proposal affects all carriers of U.S. registry and foreign air carriers who land or take off in the United States, operating scheduled passenger service or public charter passenger operations, or both, that are required to screen passengers under a security program. The expected additional annual costs should not create an economic disadvantage to either domestic operators or foreign carriers operating in the United States.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, it is determined that such a regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291. In addition, the FAA certifies that this proposal, if adopted, would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). An initial regulatory evaluation of this proposal, including a Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

List of Subjects

14 CFR Part 108

Air carriers, Airports, Air safety, Air transportation, Aviation safety, Baggage, Safety, Security measures, Transportation.

14 CFR Part 129

Air carriers, Airports, Weapons.

The Proposed Amendments

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 108 and 129 of the Federal Aviation Regulations (14 CFR parts 108 and 129) as follows:

PART 108—AIRPLANE OPERATOR SECURITY

1. The authority citation is revised to read as follows:

Authority: 49 U.S.C. App. 1354, 1356, 1357, 1421, 1424, and 1511; 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983).

2. Section 108.17(a)(5) is revised to read as follows:

§ 108.17 Use of X-ray systems.

(a) * * *

(5) The system meets the imaging requirements set forth in an approved Air Carrier Security Program using the step wedge specified in American Society for Testing and Materials Standard F792–82.

* * * * *

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

3. The authority citation for part 129 is revised to read as follows:

Authority: 49 U.S.C. App. 1346, 1354(a), 1356, 1357, 1421, 1502, and 1511; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983.)

4. Section 129.26(a)(5) is revised to read as follows:

§ 129.26 Use of X-ray systems.

(a) * * *

(5) The system meets the imaging requirements set forth in an accepted Foreign Air Carrier Security Program using the step wedge specified in American Society for Testing and Materials Standard F792–82.

* * * * *

Issued in Washington, DC, on June 6, 1990.

Monte R. Belger,

Associate Administrator for Aviation Standards.

[FR Doc. 90–14330 Filed 6–21–90; 8:45 am]

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federal register

Friday
June 22, 1990

Part VIII

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-3790-1]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Today's notice announces a tentative list of Article 5 Parties in appendix E to the final rule on stratospheric ozone protection (40 CFR part 82). An Article 5 Party is defined by the Montreal Protocol, the treaty that limits the production and consumption of ozone depleting chemicals, as a Party to the Protocol that is "a developing country whose annual calculated level (defined as the quantity of the ozone depleting chemical multiplied by its ozone depletion weight) of controlled substances of per capita consumption is less than .3 kilograms as of the date of the entry into force of the Protocol for it". Under the regulatory program for the protection of stratospheric ozone, companies that export to Article 5 Parties may increase their production of controlled substances up to the limits stated in Article 2 of the Protocol. The Agency considers this a tentative list of Article 5 Parties. It is based on the best available information, but may be revised as more relevant information is received for affected countries. The Agency reserves the right to revise this appendix should additional information become available that indicates that such countries are not Article 5 Parties, or to add to this list as more countries are eligible. These countries are Mexico, Venezuela and Thailand.

DATES: This final rule (appendix E) is effective June 22, 1990.

ADDRESSES: Comments and other information relevant to this rulemaking are maintained in Docket A-87-20 at the Air Docket room M-1500, First Floor, Waterside Mall, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket may be inspected between 8 a.m. and 3:30 p.m. on weekdays. As provided in 20 CFR part 2 a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: David Lee, Regulatory and Analysis Branch, Global Change Division, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation, ANR-445, 401 M Street SW., Washington, DC 20460, (202) 475-7497.

SUPPLEMENTARY INFORMATION: On August 12, 1988, EPA promulgated a final rule to limit the production and consumption of certain chlorofluorocarbons (CFCs) and brominated compounds (halons) to reduce the risks of stratospheric ozone depletion. The rule requires a near-term freeze at 1986 levels of production and consumption (defined as production plus imports minus exports) of CFC−11, −12, −113, −114, and −115 based on their relative ozone depletion weights, followed by a phased reduction to 80 percent and 50 percent of 1986 levels beginning in mid-1993 and mid-1998, respectively. It also limits production and consumption of Halon 1211, 1301, and 2402 to 1986 levels beginning in 1992. Under specified circumstances, limited increases in production (but not consumption) above these levels is permitted.

This rule was promulgated under section 157(b) of the Clean Air Act and constituted the United States' implementation of the Montreal Protocol, which the United States ratified on April 21, 1988. The final rule's control measures took effect when the Protocol entered into force on January 1, 1989.

The current rule implements the Protocol's requirements to control production and consumption of the CFCs and halons specified above by allocating production and consumption allowances to firms that produced and imported these chemicals in 1986, based on their 1986 levels of these activities.

In addition, producers received potential production allowances equal to 10 percent of their 1986 production levels (15 percent in 1998 for CFCs). These potential production allowances can be converted to production allowances to replace exports to Article 5 Parties. An Article 5 Party is a developing country who is Party to the Protocol and whose calculated level per capita consumption of these chemicals is less than .3 kg as of the date that the Protocol entered into effect for it. A company may also convert potential production allowances to production allowances upon receipt of production rights from another Party that has agreed to decrease its production by an equal amount for the purposes of industrial rationalization. (A **Federal Register** Notice, published on February 13, 1990 (55 FR 5007), amended the conditions under which this offset or industrial rationalization could occur. Industrial rationalization is defined in Article 1 of the Montreal Protocol as "the transfer of all or a portion of the calculated level of production of one Party to another, for the purpose of achieving economic efficiencies or responding to anticipated shortfalls in supply as a result of plant closures).

Rulemaking for Appendix E

On July 12, 1989 the Agency proposed Appendix E, "Article 5 Parties" (54 FR 29353). The Agency proposed this list which included the following countries: Egypt, Ghana, Kenya, Maldives, Mexico, Nigeria, Panama, Uganda, Jordan, and Venezuela.

In this same notice, the Agency proposed an amendment that would amend the conditions under which a company could increase its production under the limits stated in the Protocol. Originally, companies operating under § 82.11 could increase their production for exports to any Party. However, Parties, in their first meeting in Helsinki, Finland in May 1989, agreed that such increases could occur only for exports to Article 5 Parties, or when two Parties had agreed to transfer production, resulting in one Party increasing its production while another decreases its production for the purposes of industrial rationalization. The proposal amended §§ 82.9 and 82.11 in order to institute the agreement of the Parties.

The Agency finalized this amendment on February 13, 1990 (55 FR 5007), but was unable to finalize the list of countries it had proposed as Article 5 Parties due to unresolved data issues. Since that time the Agency has received additional data that allows EPA to better estimate per capita consumption for the period specified by Article 5 (the date that the Protocol entered into effect for the developing country which is January 1, 1989 or after).

As the Agency stated in the February 13 **Federal Register** Notice, no developing country Party has yet to submit data on its consumption of controlled substances as of the date the Protocol entered into force for it, January 1, 1989 or later. Many countries, including most developing country Parties, have not yet complied with Article 7 of the Protocol that requires countries to report their levels of production and consumption of controlled substances in 1986 within three months of becoming Parties. As a result, there was little or no basis at that time for determining whether any developing country consumed controlled substances at an annual calculated level of less than .3 kilogram per capita on the date that the Protocol entered into effect for it, and thus whether any developing country Party could avail itself of the special treatment afforded by Article 5.

In response to a request from the United States, the Secretariat of the Protocol decided that under these

circumstances, it could not and would not make a determination of which Parties should be considered to be operating under Article 5 until the country submits data demonstrating that its consumption of controlled substances as of the date the Protocol entered into force for it was less than .3 kilogram per capita. The Secretariat explained that a different approach to identification of Article 5 Parties would risk allowing higher production and consumption of controlled substances than the Protocol would otherwise allow, or make an incorrect assumption as to a Party's desire to operate under Article 5, or both. To remedy this situation, the Secretariat requested this data from all Parties that wish to be considered Article 5 Parties.

The United States also requested similar data from a subset of potential Article 5 Parties, relying upon U.S. embassies within these countries to convey the need for these countries to report their Article 5 status to both the Secretariat and the United States.

Based on information received to date from both the Secretariat and the United States' data request, the Agency believes that it is appropriate to identify a tentative listing of Article 5 countries at this time. The United States has expressed the need for a list of Article 5 Parties to other Parties of the Protocol, and the United States believes that it must proceed with identification of these countries at this time, based on the best available information in order to allow for effective use of the potential production allowances permitted under the Protocol during the first control period. U.S. industry had planned to increase its production based on good faith that countries would report in a timely manner the provisions stated in the Protocol. Indeed, several companies exported to countries that were proposed as Article 5 Parties in the **Federal Register** Notice published last July. In such cases, these countries have benefited from the supply of these chemicals, yet the U.S. producers have not been able to increase their production of these chemicals under the provisions of the Protocol. It is possible that domestic producers would not have exported to these countries, if they had known that they would be unable to increase their production. If such producers are unable to increase their production under the limits of the Protocol, it is the domestic users who are ultimately deprived of these chemicals.

For these reasons, the Agency believes that it must publish a tentative list of Article 5 Parties. EPA is publishing this list today to provide affected companies with sufficient time within this control period to adjust their production schedules. The Agency obtained individual country per capita consumption data directly from the countries or from information on 1986 consumption estimates recently received from the Secretariat.

Based on this information, the Agency announces three countries that tentatively qualify as Article 5 countries. These countries are Mexico, Venezuela, and Thailand. These three countries are Parties to the Protocol and are considered by the Secretariat as developing countries. The Agency has assumed, based on the best available information, that their individual calculated level per capita consumption is less than .3 kilogram. EPA emphasizes that these countries have not yet reported their calculated level of per capita consumption for the required period, the date on which the Protocol entered into effect for these countries, and that the Secretariat has not yet declared these countries as Article 5 Parties for this reason. However, based on information the Agency has recently received concerning these countries, EPA may tentatively assume that their per capita consumption was below .3 kilogram at the time that the Protocol entered into effect for these countries.

The Agency has received information from the Secretariat that Venezuela's calculated level per capita consumption was "below .3 kilograms" for 1986. Recent information from the United States' embassy in Venezuela indicates that based on discussion with the Venezuelan Environmental Ministry, Venezuela's per capita consumption has fallen to almost .2 Kg over the past year, and that Venezuela considers itself on Article 5 Party.

The Agency has also received information from the Secretariat that Mexico's 1986 calculated level per capita consumption is "well below .3 kilograms". Recent information from the United States' embassy in Mexico confirmed that Mexico has declared itself an Article 5 Party and that "Mexico's controls on the use of CFCs and halons are much stricter than those under the Protocol", and implied that per capita consumption of these chemicals have dropped since 1986.

EPA has also received information from the Secretariat that Thailand's per capita consumption of these chemicals is "well below .3 kg". However, the Secretariat warned EPA that Thailand has not reported all the controlled substances to the Secretariat. The Secretariat did not identify the missing controlled substances. The Agency has not yet received any communication from Thailand on its status as an Article 5 Party. Companies should be aware of Thailand's situation before increasing production to replace exports to this country as an Article 5 Party.

The Agency proposed Venezuela and Mexico as Article 5 Parties in Appendix E (54 FR 29353) on July 13, 1989. Today's notice completes rulemaking for these countries. The Agency did not propose Thailand since it was not a Party to the Protocol at that time. However, the Agency believes that it must now announce Thailand as an Article 5 Party without first proposing such status under 5 U.S.C. 553(6)(B) which provides that an Agency may dispense with notice and comment for good cause on grounds of impracticality or contrary to the public interest. The Agency does not believe that there is sufficient time for industry to take advantage of the provisions of the Montreal Protocol by the end of the control period (June 30, 1990) if the Agency were to proceed with notice and comment on this country. In addition, in the Notice of Proposed Rulemaking, EPA announced the criteria under which a country could be included as an Article 5 Party. The Agency has exhausted all authoritative resources (the Secretariat of the Protocol and the government of Thailand) who would have the best knowledge of Thailand's status, and believes that notice and comment would not likely provide additional data for this country.

In the future, the Agency intends to propose additional Article 5 Parties for notice and comment, and to review data, if any is available, received during the public comment period, before final promulgation of their status. EPA will proceed accordingly when the Secretariat cannot "officially" declare Article 5 Party status for technical reasons despite data and analysis that indicate the country so qualifies. However, if the Secretariat should formally designate a country as an Article 5 Party, the Agency would view the addition of that country to Appendix E as a purely ministerial task for which notice and comment was unnecessary. Therefore, the Agency shall at that time proceed to amend Appendix E through a technical amendment without any notice and comment period.

Domestic companies that have exported to these three countries will receive "authorizations" at their request to increase their production under the limits of the Protocol. Such authorizations are valid for only this control period.

However, since this designation is not based on consumption information for the specified time period, the date on which the Montreal Protocol entered into effect for the developing country, but on information that suggests such status, the Agency considers this list as tentative. If the Agency should learn at a later date that these countries are not Article 5 Parties (i.e., they do not appear on an eventual list developed by UNEP), the Agency shall delete these countries from appendix E, and rescind any authorizations to increase production for exports to these countries.

To date, the Agency has not received consumption estimates for many of the other developing countries that are Party to the Protocol, or have received reports that are inconsistent with reports to the Secretariat. The Agency will continue to work through its embassies and the Secretariat to determine the per capita consumption of controlled substances for all developing countries that are Party to the Protocol.

Additional Information

1. Executive Order 12291

Executive Order (E.O.) 12291 requires the preparation of a regulatory impact analysis for major rules, defined by the order as those likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in cost or prices for consumers, individual industries, federal, state or local government agencies, or geographic industries; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of the United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

EPA determined that its August 12, 1988, final rule to protect stratospheric ozone met with the definition of a major rule, and therefore prepared a regulatory impact analysis (RIA). Since these amendments do not impose any significant burdens as defined by E.O. 12291, the RIA prepared for the final rule fulfills the executive order's requirement for these proposals.

2. Paperwork Reduction Act

The information collection requirements contained in the final rule published on August 12, 1988 (53 FR 3056) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. et seq. and have been assigned OMB control number 2080–0170.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 and the Office of Information and Regulatory Affairs, Office of Management and Budget Paperwork Reduction Project (2080–0170), Washington, DC 20530, marked "Attention: Desk Officer of EPA".

3. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of the agency certifies that a rule will not have a significant number of small entities, pursuant to 5 U.S.C. 605(b). EPA prepared an initial RFA in support of its final rule, and no additional RFA need be prepared for these amendments.

Dated: June 15, 1990.

William K. Reilly,

Administrator.

List of Subjects in 40 CFR Part 82

Stratospheric ozone.

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The Authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7457(b).

2. Part 82 is amended by adding appendix E to read as follows:

Appendix E—Article 5 Parties

Mexico, Venezuela, Thailand.

[FR Doc. 90–14523 Filed 6–21–90; 8:45 am]

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Reader Aids

Federal Register

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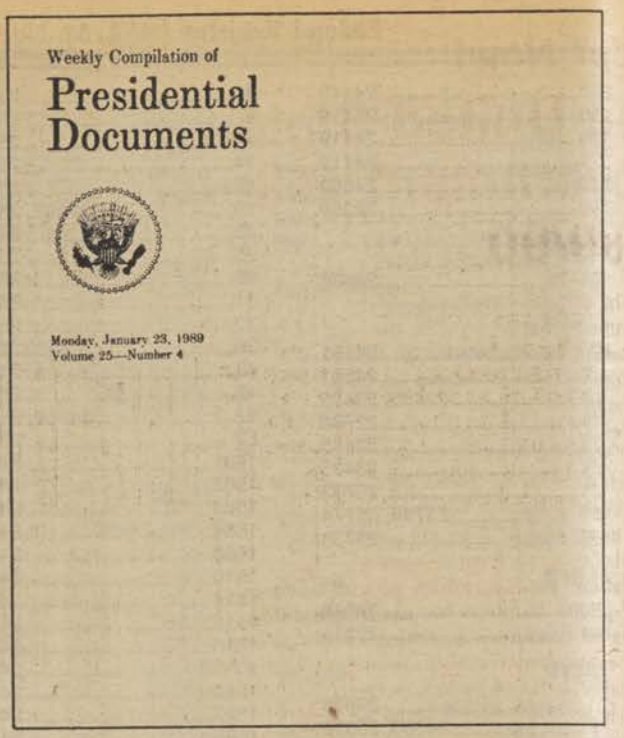

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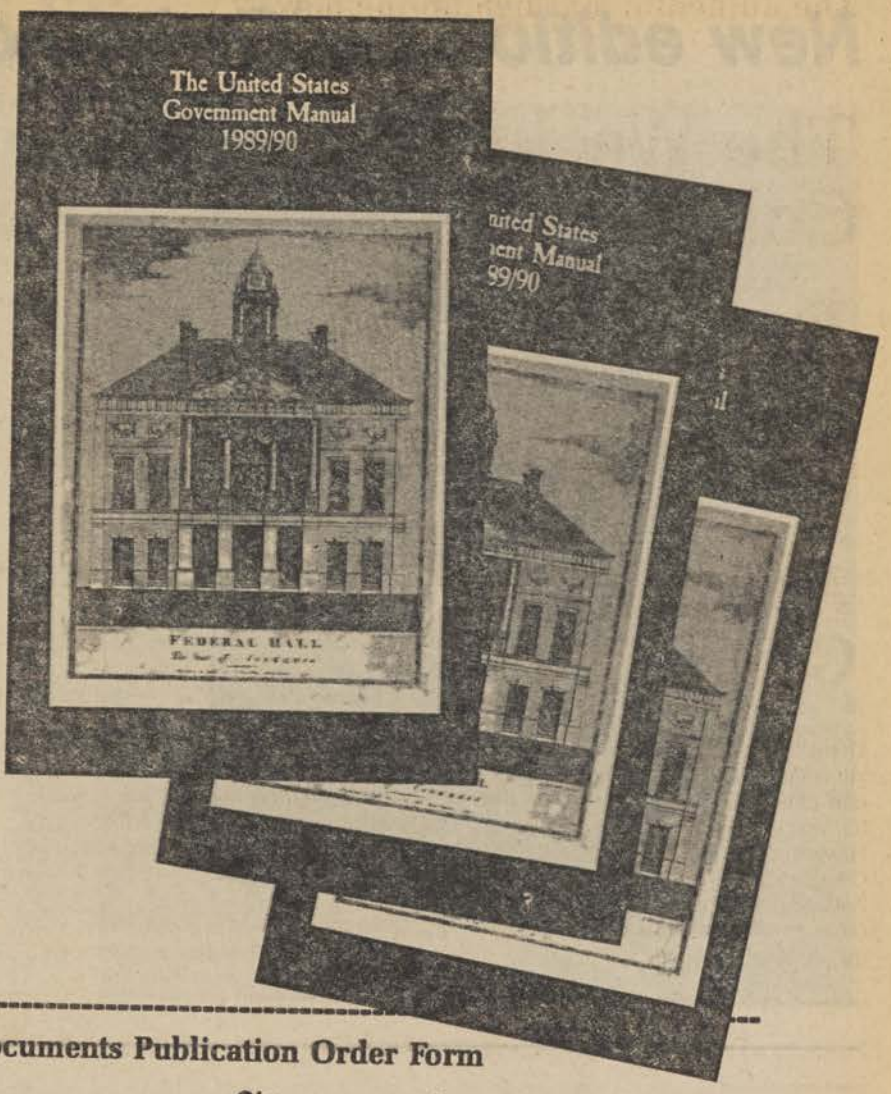

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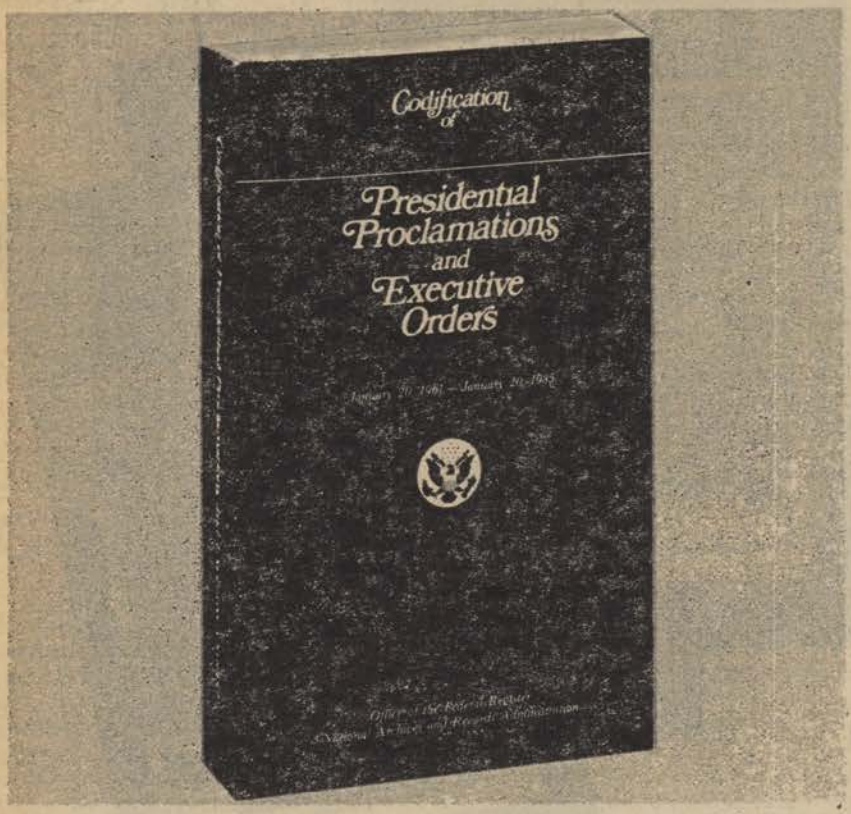

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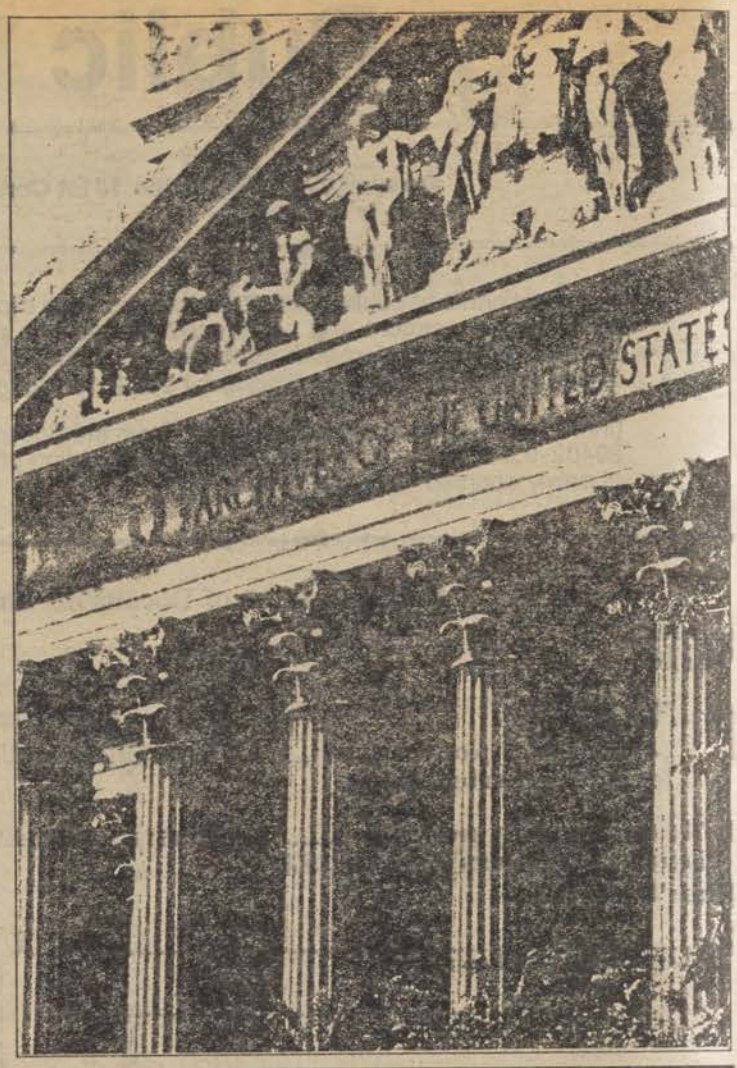

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